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Trial

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

20-CR-188 (JSR)

5 RUBEN WEIGAND and  
6 HAMID AKHAVAN,

7 Defendants.

Trial

8 -----x

9 New York, N.Y.

10 March 19, 2021  
9:00 a.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

15 AUDREY STRAUSS

16 United States Attorney for the  
17 Southern District of New York

18 BY: NICHOLAS FOLLY

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1 (Trial resumed; jury not present)

2 THE COURT: Good morning. Please be seated. So a  
3 number of scheduling matters. First, I teach first-year  
4 criminal law at Columbia Law School. Someday I'll get it  
5 right. And I forgot there's a make-up class that I have to  
6 teach from 3:30 to 4:50 today; so we will end today at 3:25,  
7 and then we'll have the charging conference at 5:00. That's  
8 just as well because although I hope to get you the draft  
9 charge by lunch, in any event, you'll have it well before the  
10 charging conference, and then I'll give you an hour or more to  
11 look it over.

12 MR. TAYBACK: Your Honor, with respect to the charging  
13 conference, your clerk asked whether we would waive the  
14 appearance of our clients, and we will.

15 THE COURT: Very good. That makes a lot of sense  
16 because it's all going to be legalistic.

17 MR. TAYBACK: Yes.

18 THE COURT: Then in terms of summations, think about  
19 this and then we'll discuss this at the charging conference.  
20 If we finish today, including any rebuttal witness, great. If  
21 we don't, what I'm about to say will be moot, but assuming we  
22 finish today, on the time estimates that we worked out  
23 previously, we would have a situation where we would have the  
24 government's opening summation, the two defense summations and  
25 then the government's rebuttal summation would be the following

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1 morning.

2           Actually, that's the way it worked out the last trial  
3 I had. It occurred to me that the defense might prefer to have  
4 everything done in one day. If you do, it would mean everyone  
5 is going to cut 15 minutes off their original estimate. The  
6 government, I gave an extra 15 minutes.

7           MR. TAYBACK: Your Honor, we can do that.

8           MR. GILBERT: We would agree to do that.

9           THE COURT: Okay. That's great. We will work out the  
10 absolute specifics this evening, but that all sounds great.

11           Okay. Now, tell me who we have as our witnesses  
12 today.

13           MR. TAYBACK: I'm going to cede the microphone to  
14 Mr. Burck.

15           THE COURT: Yes.

16           MR. BURCK: Morning, your Honor.

17           THE COURT: Mr. Burck is not happy unless he's at a  
18 microphone.

19           MR. BURCK: Your Honor, you read me too well.

20           Your Honor, we're planning to -- we have, I think, a  
21 maximum of three witnesses, maybe only two, and the third I'll  
22 explain in a moment, your Honor. We have a summary witness,  
23 who is also going to be a fact witness on purchasing marijuana  
24 on the Eaze website through Circle. So he's going to testify  
25 to his own actual purchase, which is the document that is

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1 already in evidence --

2 THE COURT: You said a summary witness. What's he  
3 going to summarize?

4 MR. BURCK: He's really not a -- he's mostly a fact  
5 witness. There are a couple of documents in the end, just like  
6 the government used an agent, we're just going to have him  
7 introduce those documents.

8 THE COURT: Okay.

9 MR. BURCK: But he's primarily a fact witness about  
10 what he did. So that should be a pretty short direct, your  
11 Honor, and then there's a second witness, because what we plan  
12 to do is put up the screen. Mr. McLeod, who you met yesterday,  
13 has assured us that it's going to take a couple minutes, tops,  
14 to put the screen on here, plug it in, ready to go, and have  
15 the Circle witness up.

16 My intention, your Honor, is to have that direct done  
17 in a half hour. The only thing that even makes it that long is  
18 that, because of the remote, we're going to have the same  
19 issue, where it's going to take some time to find the document  
20 that I'm looking for. We put it in order form, but we don't  
21 control him so we don't know exactly what he's going to do.

22 One of the things I wanted to raise with this witness,  
23 your Honor, is that to your point we don't want to get into the  
24 crypto and all the nonsense about how it all works, I'm going  
25 to have to lead him a little bit because, again, I don't

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1 control him; so he might ask --

2 THE COURT: You know, as I've indicated before, of all  
3 the objections set forth in the Federal Rules of Evidence, the  
4 one that I think is most waivable, so to speak, is leading  
5 because it really only makes sense when you have a witness who  
6 can be easily led, a person of limited education or something  
7 like that.

8 Clearly, this witness is not a witness who can be  
9 easily led, just given his position; so that's fine.

10 MR. BURCK: Okay, your Honor. Thank you. And I'm  
11 going to keep it at a very high level. I'm going to ask him  
12 nothing that goes into the details of the business.

13 And then the only question at that point, your Honor,  
14 is whether we're going to have a third witness, who would  
15 actually go in between these two witnesses, which is a witness  
16 from Mr. Weigand, which is similar to our investigator. It's  
17 an investigator who did the same thing with a couple other  
18 banks, and we have asked the government to stipulate to  
19 authenticity. They've done so.

20 The question really as to whether or not we need her  
21 is whether or not the documents are coming into evidence. So  
22 they're authentic, and the only thing she'd be doing is the  
23 same thing our first investigator will be doing is saying, I  
24 went to the website, I pressed the button, I pressed this  
25 button, I entered my debit card and I got marijuana product.

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1 THE COURT: Okay. And so that's your only witness,  
2 Mr. Weigand's side?

3 MR. GILBERT: Yes, it is.

4 THE COURT: Thank you. All right. That all sounds  
5 very good.

6 Let me ask the government, are you planning to call a  
7 rebuttal witness?

8 MS. LA MORTE: Not at this time, your Honor.

9 THE COURT: Okay. Well, then we are in very good  
10 shape. So I guess the government will have to give their first  
11 summation today. Just kidding.

12 MS. LA MORTE: I would vehemently object to that.

13 THE COURT: Okay. Anything else we need to take up  
14 this morning?

15 MS. DEININGER: Yes, your Honor, the government does  
16 have objections to certain of the exhibits that we were  
17 informed that defense will be seeking to be admitted through  
18 its initial witness. And so I'd like to start on that with  
19 Exhibit HAX11006.

20 I don't know, Mr. McLeod, if you -- if Mr. McLeod has  
21 the ability to pull it up to look at, and if not, I have a hard  
22 copy I can bring up.

23 THE COURT: I see it.

24 MS. DEININGER: But this appears to be screen shots  
25 and photographs taken by the defense investigator --

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1 MS. CLARK: Emily, this is Ms. Clark for the defense.  
2 We can obviate this. We're not going oh to offer it.

3 MS. DEININGER: Okay. Then our next objection is to a  
4 group of documents that are marked as HAX814 to 828, I believe.

5 If we can pull up one of those as an example. Thank  
6 you, Mr. McLeod.

7 So I believe the defense intends to introduce this  
8 through its summary witness. The government objects on rule  
9 401 and 403 grounds. I think, these were originally produced  
10 to us as potential exhibits for Mr. Vardaman to testify to, and  
11 then I think the position that the defense took is they wanted  
12 to say that it was -- that Mr. Vardaman was going to talk about  
13 what the U.S. government has said about marijuana sales in this  
14 particular context.

15 This has nothing to do with what the government said  
16 about marijuana sales. It takes another step, and it's  
17 completely removed from the central issues in this case. It is  
18 not at all about the government's enforcement of laws  
19 prohibiting marijuana sales, and has extremely minimal  
20 relevance, if any. I think their argument --

21 THE COURT: Before you go further, I'm having a little  
22 trouble seeing the fine print. So let me ask defense counsel,  
23 so what does this purport to show?

24 MS. CLARK: Your Honor, did you say what is this  
25 showing?



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1 THE COURT: Yes.

2 MS. CLARK: So, your Honor --

3 THE COURT: Number of depository institutions actively  
4 providing banking services to marijuana-related business, what  
5 does that have to do with anything?

6 MS. CLARK: Yes, your Honor. So we think that the  
7 government opened the door on these exhibits. You've heard  
8 testimony from a number of witnesses on specifically two of the  
9 issuing banks, that the banks don't bank marijuana-related  
10 businesses or have policies against it.

11 Mr. McLeod, if you could turn to page 2 of this.

12 The federal government has identified hundreds of  
13 banks that do bank MRBs. These are banks that we haven't heard  
14 from, and we won't hear from in the trial otherwise, your  
15 Honor. So we think this directly rebuts the government's  
16 evidence from bank records regarding, for example, closure of  
17 MRB accounts or policies against them.

18 THE COURT: This seems to me to be very, very  
19 marginally relevant, if at all. The government's position is  
20 that if a reasonable banker knew that the defendants and their  
21 co-conspirators were repeatedly lying to them by providing  
22 false information about purchases, that would be important to a  
23 reasonable banker.

24 The defense has said, no, they really knew, in this  
25 case. Although, the standard here is objective and not related

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1 to directly what was known in this case. They really knew it  
2 was marijuana, but they didn't care. And that's why I'm  
3 allowing in the Circle stuff as bearing on that.

4 This, if anything, shows some other banks -- who knows  
5 who they are -- knowingly, without any lying to them as far as  
6 the chart suggests, processed marijuana. That's a totally  
7 different situation.

8 MS. CLARK: Your Honor, I --

9 THE COURT: One of the reasons I allowed -- even  
10 though the standard is objective, one of the reasons I allowed  
11 the defense in this case to put in evidence of what was the  
12 alleged state of mind of the banks that were here involved was  
13 because I think that was responsive to the government's  
14 position that lying was itself the be-all and end-all.

15 This obscures that critical distinction. This just  
16 says, as best I can tell, that there were some financial  
17 institutions, unspecified, who --

18 MS. CLARK: Your Honor, we're happy to pull them.

19 THE COURT: -- allowed marijuana transactions.

20 MS. CLARK: We'll pull them. We don't need to offer  
21 them.

22 THE COURT: Okay. Very good.

23 MS. DEININGER: Your Honor, we also had an objection  
24 to HAX11001, and this is a document -- this is a series of  
25 photographs -- we have two objections, one general and one to

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1 specific pages of this document.

2 But the general objection is that this appears to  
3 relate to a transaction through Eaze utilizing Circle, but it  
4 doesn't indicate that the transaction was actually ever  
5 approved, settled or cleared by an issuing bank. It says that  
6 it's processing at the top, and because of that --

7 THE COURT: I'm sorry. Yes, blow it up. Let me see.  
8 So it was processed.

9 MS. DEININGER: And, Mr. McLeod, if you can just  
10 scroll down a little bit. No, sorry, the same page.

11 THE COURT: Yes, now you've gone too far.

12 MS. DEININGER: But just for comparison with the other  
13 entries on that same sheet, where you can see that transactions  
14 that have been approved, settled and cleared, have dates.

15 THE COURT: All right. What's redacted there?

16 MS. CLARK: Your Honor, those are other unrelated  
17 transactions but, your Honor, I would just let you know that  
18 the witness is going to testify that the transaction that's  
19 showing as processing on this page is the same transaction that  
20 cleared that we already have in evidence. But to the extent  
21 that this particular page is objectionable, we can remove this  
22 page. It's just the complete record of his transaction; so  
23 that's why it's included.

24 THE COURT: Since the bottom line is already in  
25 evidence, we don't need this page. So that's fine.

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1 MS. CLARK: Okay.

2 THE COURT: Is there any other objection?

3 MS. DEININGER: Yes, your Honor. So I think most of  
4 the rest of this exhibit is screen shots from the Eaze website  
5 as of the time of the transaction, and we would object to those  
6 as confusing and prejudicial because they represent the Eaze  
7 website as it is now, but it leaves an impression that it's  
8 what the Eaze website was at the time of the conspiracy and  
9 that these are the products being offered, and there is no  
10 evidence of that.

11 So if we can scroll past this page. This page is the  
12 receipt. To the next, past this one, but there's a bunch of  
13 pages of the Eaze website from the time of the transaction --

14 THE COURT: Well, so let me ask defense counsel. If  
15 there's no way of knowing from anything in the record whether  
16 this was the website at the time of the conspiracy, what's its  
17 relevance?

18 MS. CLARK: Your Honor, the exhibit, in its total, is  
19 just walking through the transaction that Mr. Whelan is going  
20 to testify to. As far as the website in its current state, I  
21 think we can pull some of these. I think I would direct you  
22 to, Mr. McLeod, it's HA0029. There are certain aspects of this  
23 that we think are particularly relevant.

24 THE COURT: All right. Well, I think on this one,  
25 you'll show it to the witness, each portion that you want to

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1 introduce, and I'll rule then. I now know --

2 MS. CLARK: Okay. And he'll make it clear that this  
3 transaction was in 2020; so I don't think there will be any  
4 confusion about --

5 THE COURT: No, it's different. If the fact that the  
6 banks are still taking knowingly now, according to the defense  
7 view, Eaze transactions and processing them, that I've already  
8 ruled is relevant. The fact that Eaze is advertising widely,  
9 or something like that, seems to me to be irrelevant.

10 MS. CLARK: Your Honor, I understand. Yes, sir. And  
11 we'll propose some redactions to this anyway, and as we go  
12 through, I'll offer them in that form.

13 THE COURT: Yes.

14 MS. DEININGER: On that last note, our last objection  
15 was to HAX1036, which I think goes to whether Eaze is widely  
16 advertising, which as you just noted, currently, is irrelevant.

17 THE COURT: Yes, we already have, of course, in  
18 evidence the billboard as I recall.

19 MS. LA MORTE: Yes, your Honor, and you had ruled that  
20 that was admissible in connection with rebutting the  
21 post-arrest statements.

22 THE COURT: So I don't see -- I mean, I'm sure Eaze  
23 welcomes the free advertising in this courtroom, but it doesn't  
24 seem to be relevant.

25 MS. CLARK: Okay. We don't have to offer these

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1 billboards, your Honor.

2 THE COURT: All right. Anything else?

3 MR. FOLLY: Your Honor, there were a few Circle  
4 documents. I think we had discussed them, at least some of  
5 them, previously. But we have our same objections to those  
6 documents.

7 THE COURT: I've already ruled on them; so I'm not  
8 going to go through them again.

9 MR. FOLLY: Your Honor, I'm not sure if defendants are  
10 still intending to offer 549 and 5050 -- 5049 and 5050.

11 MR. BURCK: Your Honor, those are these Circle  
12 announcements that they had Visa -- a partnership with Visa.  
13 We're not going to offer these documents. I may can ask him:  
14 Do you have a partnership with Visa, as part of this colloquy,  
15 but I'm not going to offer these documents.

16 THE COURT: All right. Very good.

17 MR. BURCK: And also to speed up the direct, since  
18 you've already ruled that the documents -- that the financial  
19 records that we're going to offer in can come in, is it okay if  
20 I just offer them in, rather than go through and show each one  
21 to him because it will just eat up time?

22 THE COURT: Unless the government has some different  
23 specific objections to a particular one.

24 MR. BURCK: Okay. Thank you, your Honor.

25 MR. FOLLY: Your Honor, there is one document, 14007,

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1 it's unclear what the testimony is going to be regarding what  
2 this represents; so I think we'd like to reserve our objection  
3 on that.

4 THE COURT: 14007?

5 MR. BURCK: I'm not offering that. It's out.

6 THE COURT: You're not. Okay. So they're not going  
7 to offer it. That's good because then I'd have to wonder what  
8 the other 14,006 exhibits are that you plan to offer.

9 MR. BURCK: Your Honor, it would be news to me. I  
10 have no idea either.

11 THE COURT: All right. Anything else?

12 MS. LA MORTE: No.

13 MR. BURCK: No, your Honor. Thank you.

14 THE COURT: Very good. All right. So we'll take a  
15 short break, and we'll start promptly at quarter of.

16 (Recess)

17 THE DEPUTY CLERK: Jury entering the courtroom.

18 (Jury present)

19 THE COURT: Please be seated. So good morning, ladies  
20 and gentlemen.

21 As you know, the burden is always on the government to  
22 prove its case beyond a reasonable doubt; so the defense  
23 doesn't have any obligation to call any witnesses, but they  
24 have decided to call a few witnesses.

25 So please call your first witness.

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Whelan - Direct

1 MS. CLARK: The defense calls Daniel Whelan.

2 THE COURT: Okay. Let's get the witness on the  
3 witness stand.

4 You may be wondering what all these wires are. The  
5 second witness is going to be a remote witness; so we'll set up  
6 for that. I know, you thought these were whips and chains, but  
7 no, they're just wires.

8 Please remain standing.

9 DANIEL WHELAN,  
10 called as a witness by the Defendants,  
11 having been duly sworn, testified as follows:

12 THE COURT: You can be seated. Please state and spell  
13 your full name for the record.

14 THE WITNESS: Name is Daniel Whelan, W-h-e-l-a-n.

15 MS. CLARK: Thank you, your Honor.

16 DIRECT EXAMINATION

17 BY MS. CLARK:

18 Q. Good morning, Dan.

19 A. Good morning.

20 Q. Mr. Whelan, how old are you?

21 A. 58 years old.

22 Q. And where do you live?

23 A. Newport Beach, California.

24 Q. Did you go to college?

25 A. Yes.



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Whelan - Direct

1 Q. Where did you go to college?

2 A. Georgia Southern.

3 Q. And what was your degree in?

4 A. Accounting.

5 Q. What year was that?

6 A. 1984.

7 Q. Mr. Whelan, would you please walk me through your  
8 employment history briefly, starting right after college  
9 through today?

10 A. After graduating, I went to work for a CPA firm in Atlanta  
11 called Jones and Kolb, where I worked there for a little over  
12 two years, obtained my CPA certificate, then joined the FBI at  
13 that point, and worked for the FBI for 25 years, and then  
14 retired from the FBI in 2011.

15 And then went to work for a year for a group called  
16 SIGTAR, with Treasury Department. That's a Special IG for the  
17 Troubled Asset Relief Plan. And in 2012, started my own  
18 private investigation business, and then in 2015, started  
19 working with Guideposts as an independent contractor.

20 Q. And do you currently work for Guidepost as an independent  
21 contractor?

22 A. I work for Guidepost as an independent contractor, yes.

23 Q. Okay. And, Mr. Whelan, I think you said that you worked  
24 for FBI for 25 years. During that time, did you have  
25 experience reviewing financial transaction data?

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Whelan - Direct

1 A. Yes.

2 Q. All right. Mr. Whelan, I would like to -- you have a  
3 binder in front of you with some documents. You can use that  
4 or you can rely on the screen, whatever is easier for you.

5 A. Okay.

6 Q. Mr. Whelan, were you asked to review some Excel  
7 spreadsheets in connection with your testimony here today?

8 A. Yes, I was.

9 Q. And did you also review summaries of some of the data taken  
10 from those spreadsheets?

11 A. Yes.

12 Q. Mr. McLeod, would you please place before the witness and  
13 the jury Government Exhibit 2201, it's in evidence.

14 Mr. Whelan, can you see that on your screen?

15 A. Yes, I can.

16 Q. Are you familiar with this document?

17 A. Yes, I can -- or yes, I am.

18 Q. Did you review it?

19 A. I did.

20 Q. And just, in general, what kind of information is presented  
21 on this document?

22 A. It's a spreadsheet containing Visa credit card  
23 transactions.

24 Q. And could you please read for me the first -- sorry, the  
25 titles of columns A and B?

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Whelan - Direct

1 A. Column A is "issuer name;" Column B is "issuer country."

2 Q. Thank you.

3 Mr. McLeod, could you please place before the witness  
4 only Defense Exhibit 10067.

5 Mr. Whelan, could you take a look at that document?

6 A. Yes.

7 Q. Do you recognize that document?

8 A. Yes.

9 Q. And briefly, what is this document?

10 A. This document is a listing of all U.S. issuing banks on  
11 that spreadsheet 2201; so they were part of the credit card  
12 transactions. They are only U.S. banks.

13 Q. And, Mr. Whelan, did you review this for accuracy against  
14 2201?

15 A. Yes.

16 MS. CLARK: Defense offers Defense Exhibit 10067.

17 MS. DEININGER: No objection.

18 THE COURT: Received.

19 (Defendant's Exhibit 10067 received in evidence)

20 BY MS. CLARK:

21 Q. Mr. Whelan, how many bank names were reflected in 10067?

22 If you could go to the last page, Mr. McLeod, that  
23 might help.

24 A. There were 915 bank names reflected.

25 Q. Thank you.

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Whelan - Direct

1           Mr. McLeod, if you could take that down. Could you  
2 please place before the witness and the jury Government  
3 Exhibit 2202 in evidence.

4           Mr. Whelan, can you see that document?

5       A. I do.

6       Q. Are you familiar with this document?

7       A. I am.

8       Q. And did you review it?

9       A. I did.

10      Q. What do you understand this document to represent,  
11 generally?

12      A. Visa credit card transactions.

13      Q. And could you read for me, please, the titles of Column B  
14 and C?

15      A. Yes. For B, it's "issuing countries," and C it's "issuing  
16 institutions."

17      Q. Would you please place before the witness only Defense  
18 Exhibit 10070.

19      Mr. Whelan, do you recognize this document?

20      A. I do.

21      Q. Did you review it?

22      A. I did.

23      Q. And did you review it for accuracy similarly to the way  
24 that you reviewed 2201?

25      A. I did.

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Whelan - Direct

1 Q. Did you find it to be accurate?

2 A. I did.

3 Q. And, Mr. Whelan -- apologies -- how many different U.S.  
4 issuing banks were listed in 10070?

5 A. There were 763 banks.

6 Q. And did you confirm that total to be accurate as against  
7 exhibit -- Government Exhibit 2202?

8 A. I did.

9 Q. Please take that down, Mr. McLeod. I'm sorry. Mr. McLeod,  
10 would you mind putting that back up.

11 MS. CLARK: Defense offers Exhibit 10070.

12 MS. DEININGER: No objection.

13 THE COURT: Received.

14 (Defendant's Exhibit 10070 received in evidence)

15 BY MS. CLARK:

16 Q. Mr. McLeod, would you please place before the witness only  
17 Defense Exhibit 10068.

18 Mr. Whelan, do you recognize this document?

19 A. I do.

20 Q. Did you review it?

21 A. Yes.

22 Q. And what generally does this document represent?

23 A. This is the combination of spreadsheets 2201 and 2202's  
24 U.S. banks that we pulled from those spreadsheets.

25 Q. And did you review this document for accuracy?

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Whelan - Direct

1 A. Yes, I did.

2 MS. CLARK: Defense offers Defense Exhibit 10068.

3 MS. DEININGER: No objection.

4 Q. And how many different U.S --

5 THE COURT: Yes, received. Thank you.

6 (Defendant's Exhibit 10068 received in evidence)

7 MS. CLARK: Apologies.

8 BY MS. CLARK:

9 Q. And could you provide us the total number of banks  
10 reflected on this document?

11 A. Yes, it's 1,113.

12 Q. Thank you.

13 Mr. McLeod, would you please place before the witness  
14 and the jury Government Exhibit 2301 in evidence.

15 Mr. Whelan, are you familiar with this document?

16 A. I am.

17 Q. And what do you understand this document to represent,  
18 generally?

19 A. These are MasterCard credit card transactions.

20 Q. And if you could please read for me the titles of --  
21 sorry -- of column I and column G?

22 A. Column I and column -- I'm sorry?

23 Q. Scrap that. Just column I, please?

24 A. Column I is "issuer name."

25 Q. Thank you.

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Whelan - Direct

1 Would you please place before the witness only Defense  
2 Exhibit 10071.

3 And do you recognize this document, Mr. Whelan?

4 A. Yes.

5 Q. Is this a similar summary to the types of summaries  
6 prepared for 2201 and 2202?

7 A. Yes, it is.

8 Q. And did you review this document for accuracy?

9 A. I did.

10 MS. CLARK: Defense offers Defense Exhibit 10071.

11 MS. DEININGER: No objection.

12 THE COURT: Received.

13 (Defendant's Exhibit 10071 received in evidence)

14 BY MS. CLARK:

15 Q. Mr. Whelan, how many U.S. banks were represented in this  
16 summary?

17 A. There were 263 banks represented.

18 Q. Thank you.

19 Finally, Mr. McCleod, could you please place before  
20 the witness only Defense Exhibit 10069.

21 Mr. Whelan, are you familiar with this document?

22 A. Yes, I am.

23 Q. And did you review it for accuracy?

24 A. I did.

25 Q. And what does it represent?

L3JPWEI1

Whelan - Direct

1 A. It represents -- it referenced three spreadsheets we just  
2 spoke about, 2201, 2202, 2301, a combination of all the U.S.  
3 banks.

4 Q. And what's the total number of U.S. banks reflected in this  
5 exhibit?

6 A. The total number was 1,324 banks.

7 MS. CLARK: The defense offers Defense Exhibit 10069  
8 into evidence.

9 MS. DEININGER: No objection.

10 THE COURT: Received.

11 (Defendant's Exhibit 10069 received in evidence)

12 BY MS. CLARK:

13 Q. Mr. Whelan, recalling Government's Exhibit 2201, 2202 and  
14 2301, do each of those columns reflect a merchant name?

15 A. Yes.

16 Q. And does each of those spreadsheets also contain a date  
17 associated with each of those transactions presented in it?

18 A. Excuse me, can you say that one more time?

19 Q. Yes. Sorry. Do each of those spreadsheets also include a  
20 date associated with each transaction?

21 A. Yes.

22 Q. Mr. McLeod, would you mind putting up Government  
23 Exhibit 2201 and 2301 side by side, showing the date column in  
24 each. It's column B, Mr. McLeod.

25 Mr. Whelan, is there a difference between how the date



L3JPWEI1

Whelan - Direct

1 is represented in 2201 and 2301?

2 A. Yes, there's a difference in how it's represented here.  
3 Yes.

4 Q. What's the difference?

5 A. The difference is on 2201, you have an actual day date. If  
6 we take the first one, 5-3-2018 in D5 of the cell, and then on  
7 the 2301, you have just the month and year. If you take cell  
8 B2 you see 2017-01.

9 Q. Thank you.

10 Mr. McLeod, would you please place before the witness  
11 only Defense Exhibit 10073, 10074 and 10075.

12 Mr. Whelan, take a second, but can you let me know if  
13 you recognize these documents?

14 A. I do.

15 Q. And are you familiar with the contents of those documents?

16 A. I am.

17 Q. What, generally, do they represent?

18 A. It represents the change in merchant's name over time.  
19 When you take all those records, you see the period of time the  
20 merchant name was used from a beginning date to an end date.

21 Q. Okay. And did you confirm that these summaries were  
22 accurate?

23 A. I did.

24 MS. CLARK: Defense offers Exhibits 10073, 10074 and  
25 10075.

L3JPWEI1

Whelan - Direct

1 MS. DEININGER: Your Honor, the government does have  
2 an objection just to the title of the document as misleading.

3 MS. CLARK: Your Honor, if we just changed it to  
4 merchant names, would that obviate the objection?

5 MS. DEININGER: Yes, it would.

6 MS. CLARK: Okay. Mr. McLeod, if it's possible to  
7 redact the first two and last two words of each slide before it  
8 goes to the jury on each of those exhibits.

9 I guess, as redacted, the defense would offer those  
10 three exhibits.

11 MS. DEININGER: No objection as redacted.

12 THE COURT: Great. Received.

13 (Defendant's Exhibits 10073, 10074 and 10075 received  
14 in evidence)

15 BY MS. CLARK:

16 Q. Mr. Whelan, thank you for walking us through those. I'm  
17 going to switch to a different topic. Are you familiar with a  
18 company called Eaze?

19 A. I am, yes.

20 Q. How are you familiar with it?

21 A. I purchased cannabis or marijuana from them online.

22 Q. And this may fall under your previous answer, but generally  
23 what does Eaze do?

24 A. Eaze sells cannabis, marijuana products.

25 (Continued on next page)

L3JAWEI2ps

Whelan - Direct

1 Q. In your understanding, is Eaze fairly well known in  
2 California?

3 A. Yes.

4 Q. Mr. Whelan, I believe you said you've made a purchase  
5 through Eaze.

6 A. I did.

7 Q. How many times have you made purchases through Eaze?

8 A. On two separate occasions.

9 Q. I'm just going to speak about the first. When did you make  
10 a purchase through Eaze?

11 A. I did it on November 7th of 2020.

12 Q. That was last year?

13 A. That was last year.

14 Q. Where were you when you made that purchase?

15 A. I was in my house, my home.

16 Q. And Mr. Whelan, you have before you a binder, if you could  
17 take a look at what's marked as Defense 11001 in there.

18 MS. CLARK: And Mr. McLeod, if you would place that --  
19 the subset of that exhibit that we discussed.

20 A. OK.

21 Q. Can you flip through that and let me know if you recognize  
22 what's reflected in 11001.

23 A. Yeah. These were, when I was making the purchase online,  
24 these were the screenshots I was taking, because I would go to  
25 different pages or --

L3JAWEI2ps

Whelan - Direct

1 Q. And then I'm going to just stop you there. Do you  
2 generally recognize what's reflected in the document?

3 A. Yes, such documents as my purchase online of the cannabis.

4 MS. CLARK: The defense is going to offer into  
5 evidence Defense Exhibit 11001, showing only pages 0027 and  
6 0028 of the previous document.

7 MS. DEININGER: Your Honor, just our prior 401 and 403  
8 objections.

9 THE COURT: Yes. Overruled. The document is  
10 received.

11 (Defendant's Exhibit 11001 received in evidence)

12 Q. Mr. Whelan, can you walk me through the steps that you took  
13 to make the purchase at Eaze.

14 A. Yes. So I went to the Eaze website, eaze.com, placed in a  
15 zip code around me, but they said they would -- you know. And  
16 then it allowed me to shop online and I chose some products,  
17 some cannabis products. And you put them in an electronic cart  
18 and then you go to check out, and it says that I need to have  
19 an account with Eaze. And so I go through the process to  
20 create this account with Eaze. And part of creating the  
21 account, they require some form of ID. So I provide that. And  
22 they have a system in place to do that online. So I provided  
23 my ID.

24 And then you have the cart, and then you go to check  
25 out.

L3JAWEI2ps

Whelan - Direct

1 Q. So once you created your cart -- your account and went to  
2 check out, were you prompted to select a payment method?

3 A. Yes.

4 Q. And what did you select?

5 A. I selected to pay by debit card.

6 MS. CLARK: Mr. McLeod, if you could highlight on  
7 Exhibit 11001 the payment at the top.

8 Q. Is that how it was represented to you?

9 A. Yes.

10 Q. And did the last four reflect your debit card?

11 A. Yes.

12 Q. What did you do next?

13 A. I clicked "confirm," and then it took me to another window.

14 Q. And on that --

15 MS. CLARK: Mr. McLeod, if you would skip to the next  
16 page, please.

17 Q. Does this reflect the next window that you saw?

18 A. Yes.

19 Q. And, Mr. McLeod --

20 MS. CLARK: Mr. McLeod, if you wouldn't mind  
21 highlighting the bottom part of the "remember" section in the  
22 middle.

23 Q. And Mr. Whelan, did this provide you with information about  
24 how the transaction would appear on your statement?

25 A. Yes, it did.

L3JAWEI2ps

Whelan - Direct

1 Q. And could you read that for us.

2 A. Yes. It says, it says, "Remember, you'll see a charge from  
3 Circle Wallet Eaze.

4 Q. And did you in fact receive your delivery, Mr. Whelan?

5 A. I did.

6 Q. Did you get what you paid for?

7 A. I did.

8 Q. Would you say your transaction was successful?

9 A. Yes.

10 Q. And was your card ultimately charged?

11 A. Yes.

12 MS. CLARK: Mr. McLeod, would you please put up  
13 Defense Exhibit 11009 in evidence.

14 Q. Mr. Whelan, looking at this, is this the confirmation of  
15 that transaction which you just described?

16 A. Yes.

17 Q. And I know that this says "post date 11/9/2020." You said  
18 this is for the same transaction that you did on November 7th?

19 A. Yes, it is.

20 Q. Did you recognize the description of the transaction on  
21 your statement when you received it?

22 A. Yes, I did.

23 Q. And was it the same as the description that Eaze had  
24 prompted you when you checked out?

25 A. It says "Circle Wallet Eaze 11/7 purchase London."

L3JAWEI2ps

Whelan - Direct

1 Q. And did you recognition the transaction?

2 A. Yes.

3 MS. CLARK: If you could please show the witness only  
4 Defense Exhibit 11010.

5 Q. Mr. Whelan, do you recognize this document?

6 A. Yes.

7 Q. Generally what is this document?

8 A. It's the bank charge for the Eaze transaction prior to  
9 this.

10 MS. CLARK: Defense offers Exhibit 11010.

11 MS. DEININGER: No objection.

12 THE COURT: Received.

13 (Defendant's Exhibit 11010 received in evidence)

14 Q. Mr. Whelan, were you charged a fee for your Eaze  
15 transaction?

16 A. Yes.

17 Q. And was if in excess of the transaction amount of your  
18 purchase?

19 A. No.

20 Q. Was it --

21 A. Oh, excuse me. It's, yeah, it's the purchase and then,  
22 yeah. So it's on top.

23 Q. And was this fee charged by your bank?

24 A. Yes.

25 Q. How much was the fee?

L3JAWEI2ps

Whelan - Cross

1 A. The fee was \$6.79.

2 Q. What is the description of the fee provided by your bank?

3 A. It was -- it was described as "international transaction  
4 fee 11/8 Circle Wallet Eaze London."

5 Q. And Mr. Whelan, is Bank of America your bank?

6 A. Yes.

7 Q. Did Bank of America ever contact you about this  
8 transaction?

9 A. No.

10 Q. Did Bank of America ever inform you that you could not use  
11 your card to purchase marijuana?

12 A. No.

13 Q. Do you still have your Bank of America card?

14 A. I do.

15 Q. Thank you.

16 MS. CLARK: One second, your Honor.

17 No further questions, your Honor.

18 THE COURT: Anything from Mr. Weigand?

19 MR. GILBERT: No, your Honor.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION

22 BY MS. DEININGER:

23 Q. Good morning, Mr. Whelan.

24 A. Good morning.

25 Q. My name is Emily Deininger. I'm an assistant United States



L3JAWEI2ps

Whelan - Cross

1 attorney. We've never met before, right?

2 A. In, we haven't.

3 Q. You were retained by the defendants in connection with this  
4 case, is that correct?

5 A. Correct.

6 Q. You were retained by Mr. Akhavan?

7 A. I was -- yeah. Guy Post is who I work for, and that's who  
8 would obtain me. So I was working -- that's how -- I'm sure if  
9 we worked out the chain.

10 Q. You're getting paid for your time in connection with this  
11 case?

12 A. Yes, I am.

13 Q. And how much are you getting paid per hour?

14 A. I get paid \$185 per hour.

15 Q. How many hours have you worked in connection with this  
16 case?

17 A. It will be a guesstimate. Let me -- I'm going to say 50  
18 hours total. But, again, that's an estimate.

19 Q. And you are getting paid for the time you spent making  
20 marijuana purchases from eaze.com?

21 A. Yes.

22 Q. And you're getting paid for the time you're spending  
23 testifying here, right?

24 A. Yes.

25 Q. And for all those hours you're getting paid \$185 an hour?

L3JAWEI2ps

Whelan - Cross

1 A. Yes.

2 Q. Mr. Whelan, I think you said your bank is Bank of America,  
3 right?

4 A. Yes.

5 Q. You have a Bank of America Visa debit card?

6 A. I do, yes.

7 Q. Do you have a cardholder agreement in connection with that  
8 debit card?

9 A. I mean, I imagine. I mean, I -- could say I have one, but  
10 yeah.

11 Q. Have you ever read that cardholder agreement?

12 A. No.

13 Q. So you don't know that that cardholder agreement prohibits  
14 making unlawful transactions with your debit card?

15 MR. GILBERT: Objection.

16 A. No.

17 THE COURT: One minute. That was an objection.

18 The objection is overruled.

19 Q. Your answer to that was no; is that correct?

20 A. That's correct.

21 Q. You reviewed several spreadsheets of transaction  
22 information in connection with this case, right?

23 A. Correct.

24 Q. And those were Government Exhibits 2201, 2202, and 2301?

25 A. That's right.

L3JAWEI2ps

Whelan - Cross

1 Q. And each of those included, I think you said on direct,  
2 information on the merchant name. Right?

3 A. Correct.

4 Q. For each transaction that was listed in the spreadsheets?

5 A. That's correct.

6 Q. And that was hundreds of thousands of transactions, right?

7 A. Yes.

8 Q. Did any of those merchant names reference Eaze?

9 A. Is there a -- can you put some of these documents in front  
10 of me? There may have been, but there are several there.

11 Q. Sure. We can pull up just as an example Government Exhibit  
12 2201.

13 Mr. Levine can show what's in evidence as Government  
14 Exhibit 2201. And if you look at the column G, it says  
15 "merchant name." Do you see that?

16 A. I do.

17 Q. We can scroll it a little bit.

18 Do you see Eaze listed as any of those merchant names?

19 A. In these, no.

20 Can I ask you something?

21 THE COURT: No.

22 THE WITNESS: I'm sorry.

23 Q. Mr. Levine, you can stop. To your knowledge, Eaze was not  
24 listed as a merchant name in any of the transaction spread  
25 sheets you reviewed.

L3JAWEI2ps

Whelan - Cross

1 A. In the documents where we go from period to period, the  
2 merchant name --

3 Q. I'm talking about in those transaction spreadsheets. Did  
4 you see Eaze reviewed as a merchant name? Do you recall any of  
5 those? Eaze.com?

6 A. The word eaze.com?

7 Q. Yes.

8 A. No.

9 Q. And you said you're familiar, from your work in the FBI,  
10 you have experience reviewing financial documents; is that  
11 correct?

12 A. Yes.

13 Q. Are you familiar with merchant category codes?

14 A. Could you say that again?

15 Q. Are you familiar with merchant category codes?

16 A. No.

17 Q. So you described on direct, you made a purchase from the  
18 Eaze website, right?

19 A. Yes.

20 Q. And to your knowledge, when you made that purchase, there  
21 was no fake company name involved, was there?

22 MR. GILBERT: Objection.

23 A. Not that I'm aware of.

24 MR. GILBERT: Objection.

25 THE COURT: Overruled. The answer will stand.

L3JAWEI2ps

Whelan - Cross

1 Q. And to your knowledge when you made that purchase, there  
2 was no fake -- there was no fake company involved, was there?

3 MS. DEININGER: I'm sorry. You have to answer the  
4 question.

5 Q. To your knowledge, was there any fake company involved when  
6 you made the purchase?

7 A. In that Eaze transaction we talked about?

8 Q. Yes.

9 A. I'm not aware of one.

10 Q. And to your knowledge, was there any fake website involved  
11 when you made that purchase?

12 A. I'm not aware of one.

13 Q. And to your knowledge you weren't provided with a fake  
14 customer service number when you you made that purchase.

15 A. No.

16 Q. You made that purchase in 2021, right?

17 A. Excuse me?

18 Q. You made that purchase, sorry, in 2020, right?

19 A. In 2020.

20 Q. In November 2020?

21 A. Correct.

22 Q. And you understand that the scheme charged by the  
23 government in this case ended in 2019?

24 A. I'm not aware of when the scheme ended, so --

25 MS. DEININGER: Mr. Levine, if we can pull up

L3JAWEI2ps

Whelan - Cross

1 what's -- actually, Mr. McLeod, I'm going to ask you to help me  
2 since it was a redacted version. Can we pull up what's in  
3 evidence as HAX11001 at page 2.

4 Q. Now, Mr. Whelan, I believe you testified on direct that  
5 this is a pop-up you got on your screen when you made the  
6 purchase from eaze.com. Right?

7 A. That's right.

8 Q. And it said that you would see a charge from Circle wallet  
9 star Eaze, right?

10 A. That's right.

11 Q. And that's in fact what happened, right?

12 A. Yes.

13 Q. That's what you saw on your statement.

14 A. Yes.

15 Q. And so to your knowledge, this descriptor accurately  
16 reflects the purchase you made, right?

17 A. Yes.

18 Q. Can we pull up what's in evidence as Government Exhibit  
19 11 -- sorry, not Government Exhibit -- HAX11009.

20 Q. And so, Mr. Whelan, here we see that merchant name. It  
21 says "Circle wallet star Eaze," right?

22 A. Merchant name, yes.

23 Q. It doesn't say happypuppybox.com, right?

24 A. That does not say "happypuppybox."

25 Q. Or greenteacha.com?

L3JAWEI2ps

Whelan - Cross

1 A. No.

2 Q. Or desirescent.com?

3 A. No.

4 Q. Or Hot Robots?

5 A. I'm sorry?

6 Q. It doesn't say Hot Robots, does it?

7 A. No.

8 Q. Mr. Whelan, you're not an expert on cryptocurrency, right?

9 A. No.

10 Q. You're not an expert on Circle and how it works?

11 A. No.

12 Q. You don't work at Circle, right?

13 A. I'm sorry?

14 Q. You I don't work at Circle.

15 A. I do not.

16 Q. You don't work at Eaze.

17 A. I do not.

18 Q. With regard to this transaction that you made from eaze.com

19 on November 7, 2020, you have no reason to believe that any

20 lies were passed to Visa and MasterCard, do you?

21 A. Could you say once more the last? I didn't hear.

22 Q. In connection with the purchase that you made from eaze.com

23 on November 7, 2020, you don't have any reason to believe that

24 lies were passed to Visa and MasterCard, do you?

25 A. No.

L3JAWEI2ps

Whelan - Redirect

1 Q. And you don't have any reason to believe that any lies were  
2 passed to U.S. issuing banks in connection with that  
3 transaction either, do you?

4 A. No.

5 Q. And you know lying is wrong. Right?

6 A. If lying is wrong?

7 Q. Yes.

8 A. I mean, in most cases, I think it -- there are  
9 circumstances, yeah.

10 Q. In most cases lying is wrong, right?

11 A. Yes, I would say.

12 MS. DEININGER: No further questions, your Honor.

13 THE COURT: Any redirect?

14 MS. CLARK: Briefly, your Honor.

15 THE COURT: Go ahead.

16 MS. CLARK: Mr. McLeod, would you mind putting up  
17 again Defense Exhibit 10072. Or 10074 if it's faster.  
18 Whatever is easier.

19 REDIRECT EXAMINATION

20 BY MS. CLARK:

21 Q. While we're looking for that for the jury, Mr. Whelan,  
22 would you please turn to tab 10072 in your binder?

23 A. 10072?

24 Q. Yes. We've got it now.

25 A. OK. It's on the screen now.



L3JAWEI2ps

Whelan - Recross

1 Q. And can you just take a second to look at this document and  
2 let me know if you see the word "Eaze" on this document.

3 A. "Eaze Payment" about two thirds of the way down on the  
4 left-hand side.

5 Q. Thank you.

6 MS. CLARK: Mr. McLeod, could you put up 10072 now. I  
7 believe that's with 74. Would you put up 10073.

8 Your Honor, can I have a minute to check if the  
9 exhibit number is correct? Apologies.

10 We'll just leave that aside. No further questions.

11 MS. DEININGER: Very briefly, your Honor.

12 THE COURT: OK.

13 MS. DEININGER: Mr. McLeod, can I ask for your help in  
14 pulling back up what's in evidence as HAX10074.

15 RE CROSS EXAMINATION

16 BY MS. DEININGER:

17 Q. And Mr. Whelan, I believe you just testified that you saw  
18 the word "Eaze" on this page in connection with -- "Eaze"  
19 spelled E-a-z-e -- in connection with eazepayment.com. Is that  
20 correct?

21 A. Correct.

22 Q. And so if we look at this column, it actually looks like  
23 eazepayment.com shows up twice, once in the middle and then  
24 once two lines below that. Do you see that?

25 A. Correct.

L3JAWEI2ps

1 Q. And can you read what the dates are next to the first  
2 reference on eazepayment.com, the one in the middle of the  
3 page?

4 A. Yeah. Tell you?

5 Q. Yeah.

6 A. It's 8/5/2017.

7 Q. That's the first-used date. And what's the last-used date?

8 A. 8/5/2017.

9 Q. So that merchant name was only in use for that one day?

10 A. Here, yes.

11 Q. And let's look to three lines down where we see  
12 eazepayment.com again.

13 A. Yes.

14 Q. What's the first-used date for that merchant name?

15 A. 8/30/2017.

16 Q. And what's the last-used date?

17 A. 8/30/2017.

18 Q. So eazepayment.com was also only used for one day there?

19 A. In this case, yes.

20 MS. DEININGER: No further questions.

21 THE COURT: Anything else?

22 MS. CLARK: Nothing further.

23 MR. GILBERT: No, your Honor.

24 THE COURT: Thank you very much. You may step down.

25 (Witness excused)

L3JAWEI2ps

1 THE COURT: Please call your next -- do we have to set  
2 up the next witness?

3 All right. You can set up.

4 MR. BURCK: Your Honor, just for the record, we are  
5 waiving any confrontation clause issue with respect to this  
6 witness.

7 THE COURT: Very good.

8 MR. BURCK: And I think I state that on behalf of  
9 Mr. Weigand as well?

10 MR. GILBERT: That's correct.

11 (Pause)

12 THE COURT: I'm pretty sure that tone is a G below C,  
13 but the rest of you can figure that out.

14 MR. BURCK: Your Honor, I'm just going to test to make  
15 sure that I can be heard?

16 THE COURT: Yes.

17 MR. BURCK: Mr. Reginatto, can you hear me?

18 THE WITNESS: I can, yes.

19 MR. BURCK: And your Honor, I want to make sure he can  
20 hear you in particular.

21 THE COURT: Yes. Can the witness hear me as well?

22 THE WITNESS: I can indeed, yes.

23 THE COURT: All right.

24 MR. BURCK: Before we start, Mr. Rock bring, are you  
25 comfortable taking off your mask, or no?

L3JAWEI2ps

Reginatto - Direct

1 THE WITNESS: Yeah, absolutely.

2 MR. BURCK: OK. Thank you.

3 MR. BURCK: Mr. McLeod, the government is not, their  
4 screen is not --

5 MS. LA MORTE: No, no.

6 MR. BURCK: Your Honor, the defense calls jor ral  
7 regularna oto. I hope I'm pronouncing the name correctly.

8 THE WITNESS: That's correct.

9 JOAO PAULO REGINATTO,  
10 called as a witness by Defendant Akhavan,  
11 having been duly sworn, testified as follows:

12 MR. BURCK: May I proceed, your Honor?

13 THE COURT: Yes.

14 MR. BURCK: Thank you.

15 THE COURT: Can everyone hear this witness?

16 DIRECT EXAMINATION

17 BY MR. BURCK:

18 Q. Reginatto, I just ask that you speak into the mike as much  
19 as possible so that everyone can hear you. And of course let  
20 me know if you can't hear me or anyone else. And there may be  
21 objections, and so if you hear anything in the background, it  
22 may be the judge objecting, so just -- we'll try to indicate  
23 that to you in case you don't hear.

24 A. OK.

25 Q. Thank you.

L3JAWEI2ps

Reginatto - Direct

1 Mr. Reginatto, where do you work?

2 A. I work for a company called Circle.

3 Q. And where is Circle headquartered?

4 A. Yes. That's an interesting question these days. When we  
5 are a technology company, we mostly work remotely today. But  
6 most of our staff is based out of Boston, Massachusetts.

7 Q. It's out of Boston, Massachusetts; is that what you said?

8 A. That's right. I'm based out of Boston.

9 Q. Is that where you are currently?

10 A. That's correct. Yes.

11 Q. And where else does circle have significant offices, even  
12 if it's remotes working in them today?

13 A. New York City is another major hub for us, and we have a  
14 relevant presence in Dublin, in Ireland, and in London in the  
15 U.K. as well.

16 Q. And how long have you worked at Circle?

17 A. I have worked at Circle since September 2015.

18 Q. When was Circle founded?

19 A. I, I don't know precisely the month, but I believe it was  
20 founded in 2013.

21 Q. What is your current title?

22 A. My current title is vice president of products.

23 Q. Vice president of products? Is that what you said?

24 A. Correct.

25 Q. Can you just tell us generally speaking what your

L3JAWEI2ps

Reginatto - Direct

1 responsibilities are as vice president of products.

2 A. Sure. I, I am responsible for defining the product  
3 statement and the strategy, work with our customers to  
4 understand their needs, translate those needs into a set of  
5 products features and the roadmap that we want to pursue  
6 internally, and then cooperating with all our internal teams,  
7 but most importantly software engineering teams to build those  
8 products and bring them to market.

9 Q. And based on your current job and your history with Circle,  
10 would you say that you are familiar with how Circle operates  
11 its business, generally speaking?

12 A. I would say so, yes.

13 Q. And would that include how it operates in credit card or  
14 debit card networks?

15 A. Yes, I would say so.

16 Q. Now, Mr. Reginatto, you are appearing here today pursuant  
17 to a subpoena that was issued by the defendants requiring you  
18 to -- the company provide a witness at the trial. Correct?

19 A. That's correct.

20 Q. So you are not here voluntarily. Right?

21 A. That's correct.

22 Q. And you and I have never met before, or spoken before?

23 A. No.

24 Q. And you've never met with the defendants in this case,  
25 Mr. Akhavan and Mr. Weigand, right?

L3JAWEI2ps

Reginatto - Direct

1 A. No, not at all.

2 Q. You've never spoken to them before?

3 A. No.

4 Q. And you never met with anybody on the defense side or  
5 spoken with anybody on the defense side before, correct?

6 A. That is correct.

7 Q. And just to be clear, neither the defense, lawyers for  
8 Mr. Weigand or Mr. Akhavan, have prepared you for your  
9 testimony today. Right?

10 A. That is correct.

11 Q. So let me start with, are you familiar with a company  
12 called Eaze?

13 A. Yes. I am familiar with them, yes.

14 Q. And does circle have a business relationship with Eaze?

15 A. Yes. Eaze is one of Circle's customers currently.

16 Q. And approximately when did that business relationship  
17 begin?

18 A. I believe it began in the summer of 2020.

19 Q. So that would be last year, summer of 2020.

20 A. Summer of last year, correct.

21 Q. And is that relationship continuing to this day?

22 A. Yes.

23 Q. And are you familiar with what types of products Eaze  
24 sells?

25 A. Yes, I am familiar with them.

L3JAWEI2ps

Reginatto - Direct

1 Q. And what do they sell?

2 A. As far as I understand, they have a marketplace where  
3 customers in the State of California can purchase myriads of  
4 products, but most of those products are marijuana-related  
5 products.

6 Q. And you said that it's in California; is that right?

7 A. That's what I understand, yes.

8 Q. Now, you mentioned in the beginning that Circle is a tech  
9 company, right?

10 A. Yes. We view ourselves as a fintech company, so financial  
11 services technology company.

12 Q. "Fintech" stands for financial tech, a shorthand term for  
13 "financial tech company"?

14 A. Financial services technology, correct.

15 Q. That's f-i-n-t-e-c-h, fintech.

16 A. That's right.

17 Q. So Circle itself would be a fintech company, correct?

18 A. Correct.

19 Q. And Circle provides a way to pay for goods bought online  
20 for customers, right?

21 A. Not precisely. So if I can state how we view what we do --

22 Q. Please do.

23 A. We are a company founded on the basis of cryptocurrency  
24 technology, so essentially --

25 Q. You -- no, go ahead, please.



L3JAWEI2ps

Reginatto - Direct

1 A. So essentially we build a type of payment and treasury  
2 services for our customers that allow them to build products on  
3 top of our infrastructure. Then that infrastructure  
4 essentially involves an infrastructure that we call a digital  
5 wallet. Our customers can create a myriad of digital wallets  
6 for their users or for the purpose of their business.

7 And then we also facilitate payments from what we see  
8 as traditional payment methods, things like cards and bank  
9 accounts, into that infrastructure of digital wallets, and we  
10 also facilitate payments that process digital wallets.

11 Q. Understood. So your customer in that scenario would be,  
12 for example, Eaze.

13 A. Correct.

14 Q. Eaze is a platform that you provide additional services and  
15 products to.

16 A. That's correct.

17 Q. So as one of your services to Eaze, does Circle provide a  
18 way for people to use their debit cards to make purchases on  
19 Eaze's website?

20 A. So the product that we offer to Eaze is a product where  
21 Eaze has access to our infrastructure of digital wallets, so  
22 they can create a digital wallet in a way that's useful for  
23 their marketplace. Typically, as far as I understand, they  
24 create those digital wallets for both buyer purchases on the  
25 marketplace and seller purchases on the marketplace. And then

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Reginatto - Direct

1 they also use our payments product to essentially operate the  
2 wallets' top-up, so to deposit or to fund the digital wallets,  
3 especially on behalf of buyer end users. And then they also  
4 utilize our platform to facilitate payments between the buyer  
5 and the seller.

6 Q. And one of the things that Eaze does is use a -- allow  
7 customers to use debit cards through the Circle platform.  
8 Correct?

9 A. Yes, that's correct. They facilitate the use of debit  
10 cards to top up, to deposit funds into those the buyer's  
11 digital wallet.

12 Q. Thank you.

13 MR. BURCK: Your Honor, at this time I want to offer  
14 HAX12011 into evidence. It's a certificate of authenticity for  
15 the business records that I'm about to offer.

16 MR. FOLLY: Your Honor, I don't think the certificate  
17 itself needs to go into evidence.

18 MR. BURCK: OK. That's fine.

19 Your Honor, then we would offer Akhavan Exhibits  
20 14006, 14003, 14004, 14008, and 14005 into evidence, your  
21 Honor.

22 MR. FOLLY: Can you just publish 008 for the parties.  
23 Can you just scroll through this. Can you also just publish  
24 for the parties the certificate.

25 MR. BURCK: Publish HAX12001.

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Reginatto - Direct

1 MR. FOLLY: Your Honor, the government does have  
2 objections on 140008 and 140005.

3 THE COURT: What's your objection?

4 MR. FOLLY: The objection is based on the  
5 insufficiency of the certification of custodian of business  
6 records. These are voluminous data pulls that don't appear to  
7 have any sort of valid foundation or certificate.

8 MR. BURCK: Your Honor, we have the person who signed  
9 the certificate and the witness, so we can ask if this was  
10 produced by Circle.

11 THE COURT: The objection is overruled. The documents  
12 are received.

13 MR. BURCK: Thank you, your Honor.

14 (Defendant's Exhibits 14006, 14003, 14004, 14008, and  
15 14005 received in evidence)

16 Q. Let's start with, you're generally familiar with Visa and  
17 MasterCard networks for how -- for credit and debit cards,  
18 correct?

19 A. I believe I am familiar with how that works, yes.

20 Q. And Circle is a merchant in those networks, right?

21 A. Yes.

22 Q. And does Circle have what's called an acquiring bank or  
23 merchant bank as part of its involvement in the network?

24 A. Yes, that's correct.

25 MR. BURCK: I'd like to show the witness and the jury

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Reginatto - Direct

1 what's in evidence as Akhavan Exhibit 14006. Would you  
2 highlight the top of that. Thank you.

3 Q. So this appears to be a settlement agreement. It's titled  
4 "ECPE-comprocessing." Is that right?

5 A. That's right.

6 Q. Can you turn to the next -- and it's dated May 2019?

7 On the front of the page, right underneath the title.

8 A. Yes. Yes. I can see that, yes.

9 Q. And if you turn to the second page, Mr. McLeod.

10 A. Yes.

11 Q. On the second page, it says that the agreement -- this is  
12 at the very top -- if you can highlight that -- "the agreement  
13 is entered into between" -- it says "Circle UK Trading  
14 Limited." See that?

15 A. Yes.

16 Q. And what is Circle UK Trading Limited?

17 A. Circle UK Trading Limited is one of the Circle companies in  
18 the family of companies.

19 Q. But it's a company that's owned by Circle.

20 A. Yes, that's correct.

21 Q. Got it. And it says that it's located at 131 Finsbury  
22 Pavement, London, UK, correct?

23 A. Yes, that's correct.

24 Q. So it's located, or it's based, in the United Kingdom?

25 A. Yes. That's right.

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Reginatto - Direct

1 Q. And below that it says Circle Internet Financial Inc. is  
2 another party to the agreement?

3 A. Correct.

4 Q. And it says that it's located at 99 High Street in Boston,  
5 Massachusetts, or Boston, United States, correct?

6 A. That's correct.

7 Q. Is that the entity that you work for?

8 A. Yes, that's correct.

9 Q. Is that a holding company for Circle?

10 A. I, I wouldn't -- I wouldn't be an expert on the structure  
11 of the company.

12 Q. No problem.

13 And then it says the other party of course is  
14 E-Comprocessing, a division of eMerchantPay Limited, right?

15 A. That's right.

16 Q. So would it be fair to say that ECP, or E-Comprocessing, is  
17 the acquiring bank for Circle?

18 A. Yes. I'm not sure if I would qualify them as an acquiring  
19 bank, but it might be my lack of understanding, but there  
20 certainly was an acquiring processor or acquiring partner, yes.

21 Q. And they're also known as the merchant bank.

22 A. Correct.

23 MR. BURCK: You could take that down, Mr. McLeod.

24 Now I'd like to show the jury and the witness what's  
25 been marked as Akhavan 14003. And it's very small, so we have

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Reginatto - Direct

1 to blow it up. And actually can we start with the top  
2 left-hand side, Mr. McLeod. Thank you.

3 Q. So that's ECP, the same company you just talked about, the  
4 acquiring processor or bank?

5 A. Correct.

6 MR. BURCK: And then can you blow up the right-hand  
7 section under "MID Details." Thank you. And make it a little  
8 larger, too, so he can read. Thank you.

9 Q. Merchant ID. This is Circle UK Trading Ltd., is the  
10 merchant name or identification?

11 A. Yes.

12 Q. And then it has the descriptor below it, just an email  
13 address, help@circle.com?

14 A. Yes.

15 MR. BURCK: And then if you go further down,  
16 Mr. McLeod --

17 Q. -- you'll see something called a merchant category code.  
18 Do you see that?

19 MR. BURCK: Can you highlight that.

20 Q. And it says "Merchant category code 6540." Right?

21 Is that correct?

22 A. That's correct.

23 Q. Do you know what 6540, the merchant category code, what it  
24 means?

25 A. Yes. I believe it's a category code for transactions that

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Reginatto - Direct

1 are associated with the top-up of digital wallets, but in other  
2 terms, funding of accounts, of QuickPay, Dwolla, or Stripe,  
3 things like that.

4 Q. Do you know what the name of it is, for the category code?

5 A. No, I don't recall exactly the name.

6 MR. BURCK: OK. We can take that down, Mr. McLeod.  
7 Let's show the witness Akhavan Exhibit 14004. And highlight  
8 the top.

9 Q. Now, Mr. Reginatto, the top, the title of these letters and  
10 numbers is "customer entity ID." See that?

11 A. Yes.

12 Q. And there's a very long set of numbers and letters  
13 underneath it. Correct?

14 A. Correct.

15 Q. And you understand that to be what is called a customer  
16 entity ID, correct?

17 A. That is correct.

18 Q. And then next to that it says "payment settings." And  
19 below that it says "card payment descriptor: Circle wallet star  
20 Eaze," correct?

21 A. Correct.

22 Q. And what is that?

23 A. That is a record of an internal configuration of our  
24 product that is essentially saying that, for that customer  
25 entity ID, which is the, I believe, the customer entity ID for

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Reginatto - Direct

1 Eaze as our customer, every time we process a card transaction  
2 to top up one of their digital wallets, we are going to  
3 instruct our acquirer department to initialize that payment  
4 descriptor "Circle Wallet star Eaze."

5 Q. And when you say "card," a debit card?

6 A. A debit card.

7 Q. And then next to it, it says "create date" and "update  
8 date," and there are some dates there. And it looks to be the  
9 same: 5/05, 2020, 5/5/2020 looks to be the date that it was  
10 create and updated?

11 A. That's correct.

12 MR. BURCK: You can take that down, Mr. McLeod.

13 Now let's show the witness Akhavan Exhibit 14008, and  
14 the jury, which is in evidence.

15 Q. Blow up the very top of that, Mr. McLeod.

16 Now, Mr. Reginatto, the customer and ID, you see at  
17 the top of this, there is "customer entity ID" and "IIN," and  
18 "issuer name." Would you highlight that, Mr. McLeod. "Total  
19 payments." And "payments amount." You see that?

20 A. Yes.

21 Q. And then below the "customer entity ID" is a series of  
22 numbers and letters. See that?

23 A. Yes.

24 Q. And it may be we could go reference back to 14004, if it  
25 doesn't look familiar, but the "customer entity ID" underneath



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Reginatto - Direct

1 the --

2 MR. BURCK: Yes. Thank you, Mr. McLeod.

3 Q. Does that appear -- the number that's underneath "customer  
4 entity ID" under 14008, does it appear to be the same as the  
5 "customer entity ID" under Akhavan Exhibit 14004?

6 A. That's correct. They appear to be the same, yes.

7 Q. And so that to you indicates that this is about "Circle  
8 Wallet and star Eaze" transactions, correct?

9 A. Correct.

10 Q. And then next to that is "IIN." Do you know what that  
11 means?

12 A. Yes. I believe that means "Institution Identification  
13 Number."

14 Q. "Institution Identification Number." And there's a number  
15 next to that, correct?

16 A. Correct.

17 Q. And then next to that is issuer name, right?

18 A. Right.

19 Q. What do you understand that to reference?

20 A. So issuer name, number, is typically the first six digits  
21 of the debit card, and that identifies the issuing entity, so  
22 essentially the bank that hands to you that card, and the name  
23 of the bank is what you see in the "issuer name" column.

24 Q. Got it. The issuer name there, as you just said, is the  
25 name of the bank associated with the IIN. Correct?

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1 A. Correct.

2 Q. And the IIN -- sorry.

3 A. I would only say, as far as we know, it's an internal  
4 database that we have access to, so as far as our  
5 understanding, you know, at the time of processing those  
6 transactions, we associate that IIN to that bank.

7 Q. And that's based on the debit card number that is entered  
8 and identified the bank.

9 A. Correct.

10 Q. And then on the far end, you see "total payments" and you  
11 see "payments amount." As the first example that's there, it  
12 says 3,706. Does that indicate the number of payments that  
13 were associated with "Circle Wallet star Eaze" transactions for  
14 that bank?

15 A. That's correct.

16 Q. And then next to it is a number, and that -- it's the  
17 amount. Does that mean 400,301 dollars, U.S. dollars?

18 A. Yes. That's correct.

19 MR. BURCK: Now can we zoom back out, Mr. McLeod. And  
20 can we just blow it up, the whole page. I'd like to scroll  
21 through it. Let's just start going down. These are all a  
22 bunch of different banks. Right? Can you stop there,  
23 Mr. McLeod.

24 Q. In the middle of a bunch of different banks and credit  
25 unions, on the far left, are Eaze, Circle Eaze transactions,

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Reginatto - Direct

1 correct?

2 A. Correct.

3 (Continued on next page)

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Reginatto - Direct

1 Q. And then on the far right are the number of transactions  
2 associated with each of these entities and the amount of money  
3 that was spent, correct?

4 A. Correct.

5 Q. And can we keep scrolling down. Keep going, Mr. McLeod,  
6 page 3, and let's stop right there.

7 Do you see on the bottom of page 3, a series of Bank  
8 of America transactions?

9 A. Yes.

10 Q. And, again, these are Eaze -- these are Circle Wallet star  
11 Eaze transactions, correct?

12 A. Correct.

13 Q. And these were issued -- these were used -- these were  
14 purchased using Bank of America debit cards, correct?

15 A. Correct.

16 Q. And on the far right, it says, for example, the top, 2,413  
17 transactions for \$272,251, right?

18 A. Correct.

19 Q. A couple down it says 2,441 transactions for \$304,664,  
20 right?

21 A. Right.

22 Q. And it says more.

23 Can we keep going, Mr. McLeod? Just keep scrolling  
24 until we get to page 7, and let's stop at the bottom of the  
25 page.

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Reginatto - Direct

1 Do you see some more Bank of America transactions  
2 there in the middle? Do you see that Mr. Reginatto?

3 A. Yes.

4 Q. Keep going. And then at the bottom of the page, do you see  
5 Wells Fargo?

6 A. Yes.

7 Q. For example, there's one set of transactions that, 1,243  
8 payments, \$151,420, correct?

9 A. Right.

10 Q. If we can keep going, Mr. McLeod, and scroll a little more  
11 quickly until we get to page 16. I can't see the bottom of the  
12 page; so I'm not going to know it's 16. Thank you.

13 Now we're on page 16 of this list. Again, more Bank  
14 of America in the middle. But let's go a little bit down, and  
15 then do you see in sort of the middle, it's going to be  
16 highlighted for the jury, but I'm going to ask you to look for  
17 something called Actors Federal Credit Union?

18 A. Yes, I see that.

19 Q. And that's another credit union whose debit card was used  
20 to purchase Circle Wallet star Eaze products?

21 A. Correct.

22 Q. All right. We can keep going, and let's go to page 20, and  
23 this will be the final page, page 25, bottom of the page. Do  
24 you see Citibank?

25 A. Yes.

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Reginatto - Direct

1 Q. And you'll see that, for example, there's one set of  
2 transactions, 916 for \$113,714; and then there's another set of  
3 transactions, 259 of them for \$251,239, correct?

4 A. Correct.

5 Q. Again, these are examples of Citibank debit cards being  
6 used by their customers to buy Circle Wallet star Eaze  
7 products, correct?

8 A. Correct.

9 Q. And then just keep going, scroll a few more pages, and  
10 actually, to the end of the document, Mr. McLeod. And I think  
11 it's a total of 68 pages of banks and transactions. You can  
12 put that away, Mr. McLeod.

13 And I want to turn to Akhavan Exhibit 14,005, which is  
14 in evidence. If you can highlight the top of that, Mr. McLeod.

15 So on the -- again, we see the same customer entity ID  
16 on the far left, right? It looks to be the same?

17 A. Yes, correct.

18 Q. And we see a month next to that. And starting from the  
19 bottom to the top, it seems to go from July 2020 through  
20 February 2021, correct?

21 A. Correct.

22 Q. And then it says "total attempted payments." Then it says  
23 "approved payments." Then it says the "total attempted  
24 payments amount" and then it says "approved payments amount"?

25 A. Correct.

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Reginatto - Direct

1 Q. So I'm just going to start with the bottom because that's  
2 where -- it's almost like an e-mail, you're reading from the  
3 bottom to the top to get to the present. And this was drawn  
4 from your records, right, from Circle's records?

5 A. That is correct.

6 Q. And so does this say that in July of -- or as of July 1st,  
7 2020, there were 12 total attempted payments, ten approved  
8 payments, 479.56 attempted payments and 370.82 actual payments;  
9 is that right?

10 A. That is correct.

11 Q. Okay. Just to speed this along, I'm going to skip the  
12 attempts and just go to the actual approved and actual approved  
13 payment amounts. So then in August 2020, there were 13,000  
14 approved payments, or 13,886 approved payments, right?

15 A. Correct.

16 Q. For looks to be \$1,445,897.74; is that right?

17 A. That's correct.

18 Q. So does that mean in that month, or between 7-01 and 8-01,  
19 there is about a million and a half dollars' worth of  
20 transactions over debit cards of the banks that we just saw for  
21 Circle Eaze pot products?

22 A. That's correct.

23 Q. And then above that, for the month of September, or I  
24 should say August through September, it's \$5,995,292 for that  
25 month; and then above that, it's \$6,806,625.13; the following

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Reginatto - Direct

1 month, \$7,076,092; and then above that, 830,000 or is it --  
2 actually, it's \$8,301,488; and then it's \$8,664,664.94; and  
3 then as the most recent is \$6,180,529 of debit card  
4 transactions, correct?

5 A. Yes, that is correct.

6 Q. And these are for the Circle Wallet star Eaze transactions,  
7 correct?

8 A. Correct.

9 Q. Do you have a rough sense of how much how much total Circle  
10 Wallet star Eaze transactions had been circulated through debit  
11 cards since July of last year, rough total?

12 A. Yeah, I don't know roughly the number, but just by looking  
13 at those numbers, it sounds like it's over \$50 million,  
14 something like that.

15 Q. And that's in the last eight months or so?

16 A. That would be correct, yes.

17 Q. I'd like to show you what's in evidence as Akhavan Exhibit  
18 11,009.

19 You can show that to the jury as well.

20 Now, Mr. Reginatto, you may not have seen this before,  
21 but it's a document that's in evidence for this trial. And  
22 you'll see it's a online banking statement, right?

23 A. Seems to be, yes.

24 Q. And it says Bank of America at the top, right?

25 A. Mmm, hmm.



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Reginatto - Direct

1 Q. You have to say "yes" or "no" sorry.

2 A. Sorry, I apologize. Yes.

3 Q. And then below it, it says a date was 11-9-2020?

4 A. Yes.

5 Q. And below that, it says an amount and below that it says  
6 debit card, correct?

7 A. Correct.

8 Q. And it says the purchaser's name, and then it says the  
9 description, Circle Wallet star Eaze, 11-07 purchase London,  
10 right?

11 A. Correct.

12 Q. Do you recognize that description?

13 A. Yes.

14 Q. And what is that description?

15 A. That would be the descriptor that we use for our acquiring  
16 processor partner to utilize for the transactions that are  
17 associated with topping out those e-digital wallets.

18 Q. Got it. And you see below it says merchant category,  
19 right? And it says, "stored value card purchase or load,"  
20 right?

21 A. Correct.

22 Q. And below that it says "merchant category code 6540"?

23 A. Yes.

24 Q. And do you remember we discussed that code appeared in a  
25 different earlier in the ECP document, the acquiring bank

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Reginatto - Direct

1 document?

2 A. Yes, correct.

3 Q. Does this help refresh your recollection as to what 6540  
4 stands for?

5 A. Yes.

6 Q. It stands for stored value card purchase or load, right?

7 A. Correct.

8 Q. And then below that, it says Circle Wallet Eaze, correct?

9 A. Correct.

10 Q. And then please show the --

11 THE COURT: Counsel, we're going to need to take a  
12 mid-morning break. Do you want to do it now or after this  
13 next --

14 MR. BURCK: Your Honor, I probably need about ten  
15 minutes; so maybe right after, unless you want me to go. I can  
16 finish this in ten minutes. I'm just going to go through a few  
17 more statements.

18 THE COURT: Why don't we give the jury a break now.  
19 So, ladies and gentlemen, why don't we take a  
20 15-minute break now.

21 (Jury not present)

22 THE COURT: And I see the witness has already taken  
23 his break. So that's fine. So we'll see you all in 15  
24 minutes.

25 MR. BURCK: Thank you, your Honor.

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1 (Witness temporarily excused)

2 (Recess)

3 THE COURT: Please be seated. I'm sorry. It will be  
4 another minute or two before the jury is here.

5 MR. BURCK: Judge, I'll be done in ten minutes.

6 THE COURT: Great.

7 (Pause)

8 MR. BURCK: Judge, before the jury comes up, the last  
9 of the documents that I'm going to offer in are bank statements  
10 from the other investigator, who we don't intend to call. The  
11 government has stipulated to their authenticity. I'm going to  
12 offer them in. I'm sure they'll object, but I'll offer them in  
13 pursuant.

14 THE COURT: Is the objection that --

15 MS. LA MORTE: Your Honor, yes. We don't object to  
16 authenticity. It's the same objections as before.

17 THE COURT: Oh, I see.

18 MR. BURCK: Thank you, your Honor.

19 MS. LA MORTE: One clarification. Mr. Burck, you  
20 intend -- can you be specific about which documents you intend  
21 to offer?

22 MR. BURCK: Yes. It's 1124, 11025, 11026, 11027, and  
23 that's it.

24 MS. LA MORTE: And these are HAX numbers?

25 MR. BURCK: Yes. These are all the statements from

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1 Lynda Larson.

2 MS. DEININGER: And just to confirm, for 1124 and  
3 1127, those are the newly redacted versions we received this  
4 morning?

5 MR. BURCK: They are all redacted, yes. They are all  
6 redacted. Even if I miss something, we're only going to that  
7 one line.

8 MS. LA MORTE: In Circle?

9 MR. BURCK: In Circle, yes.

10 MS. LA MORTE: Yes, your Honor. It's just the same,  
11 preserving the same objections but, otherwise, we're fine.

12 THE COURT: All right. So you will just say  
13 "objection." I'll say "overruled" and they'll come in.

14 MS. LA MORTE: Yes.

15 THE COURT: On the other hand, maybe I should say  
16 "objection" and you should say "overruled."

17 MS. LA MORTE: That would be fun, your Honor, and then  
18 I would blow that up and hang it on my wall.

19 MR. BURCK: Your Honor, if you objected, I would  
20 definitely rescind the question.

21 THE COURT: So are you guys too young or perhaps, he  
22 said disparagingly, too ignorant --

23 THE DEPUTY CLERK: Jury entering courtroom.

24 MS. LA MORTE: To be continued.

25 THE COURT: To be continued.

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Reginatto - Direct

1 (Jury present)

2 THE COURT: Please be seated. Okay. Counsel.

3 MR. BURCK: Thank you, your Honor.

4 BY MR. BURCK:

5 Q. Mr. Reginatto, can you hear me okay?

6 A. I can. Yes.

7 Q. Great. And also, the court reporters are asking that you  
8 make sure you speak up -- it sounds okay now -- because she's  
9 having a little trouble hearing you.

10 A. Okay. I'll try to speak closer to the microphone.

11 Q. Okay. Thank you.

12 Before we go back on with the documents we were  
13 looking at, I want to go back, Mr. McLeod, to Akhavan 14,006.

14 And do you recall this is the ECP, the E-Comprocessing  
15 agreement, correct?

16 A. Correct.

17 Q. And can we turn to the second page, Mr. McLeod. And can  
18 you highlight in the middle of the page, just the middle of the  
19 page, where it says "and E-Comprocessing, a division of  
20 EMerchant Limited," that whole paragraph?

21 A. Yes.

22 Q. So this was the agreement between Circle and its acquiring  
23 bank, ECP, correct? We looked at this earlier.

24 A. Yes, correct.

25 Q. And it says that "E-Comprocessing, which is the acquiring

L3JPWEI3

Reginatto - Direct

1 bank, a company organized and existing under the laws of  
2 England and Wales, having its business address at 14 Tonbridge  
3 Chambers, Pembury Road, Tonbridge, Kent, United Kingdom,  
4 registered with companies house," right? Do you see that?

5 A. Yes.

6 Q. So ECP is an acquiring bank based outside the United  
7 States?

8 A. Yes, I believe that to be correct.

9 Q. And it's based in the United Kingdom, correct?

10 A. Correct.

11 Q. So from the perspective of an American, that would be  
12 offshore, correct?

13 A. Correct.

14 Q. Thank you. We can take that down. And if we go to Akhavan  
15 Exhibit 11,010, which is in evidence.

16 Now, before we took a break, Mr. Reginatto, we were  
17 talking about a debit card transaction that we saw on a Bank of  
18 America debit card, correct?

19 A. Right.

20 Q. So actually, why don't we go to 11,009 briefly, Mr. McLeod.

21 So do you recall this is the document we were talking  
22 about?

23 A. Yes.

24 Q. All right. Now, let's go to 11,010, Mr. McLeod.

25 And you see here it's the same postdate. It's Bank of

L3JPWEI3

Reginatto - Direct

1 America. There's an amount of minus \$6.79. It says bank  
2 charge, and then it says description: International  
3 transaction fee, 11-08, Circle Wallet star Eaze London; do you  
4 see that?

5 A. Yes.

6 Q. Is that a -- is that charge for \$6.79, was that charged by  
7 Circle Wallet?

8 A. I -- I don't believe that the charge that we initiated, no.

9 Q. That would be Bank of America, you believe?

10 A. Yes, because it says type, bank charge, I would believe  
11 that to be a Bank of America charge.

12 Q. Okay. Thank you. You can take that document down.

13 MR. BURCK: Now, your Honor, I will offer into  
14 evidence a group of bank statements whose numbers are as  
15 follows: Akhavan Exhibit 11,024, Akhavan Exhibit 11,025,  
16 Akhavan Exhibit 11,026 and Akhavan Exhibit 11,027.

17 MS. LA MORTE: Previous objection, your Honor.

18 THE COURT: Overruled. Received.

19 (Defendant's Akhavan Exhibits 11,024; 11,025; 11,026;  
20 11,027 received in evidence)

21 MR. BURCK: Thank you, your Honor.

22 Can you show the witness and the jury first Akhavan  
23 Exhibit 11,024. Can you blow up the top of that page first.  
24 Thank you, Mr. McLeod.

25 BY MR. BURCK:

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Reginatto - Direct

1 Q. So, Mr. Reginatto, do you have that document in front of  
2 you?

3 A. I have, yes.

4 Q. And does it appear to be a bank statement?

5 A. Yes, it appears to be, yes.

6 Q. And at the top it says Citibank Client Services; is that  
7 correct?

8 A. Correct.

9 Q. So this appears to be a Citibank statement, correct?

10 A. Correct.

11 Q. And if you turn to the next page, the second page, you'll  
12 see under the blackout, the redacted section -- please  
13 highlight that, Mr. McLeod -- you'll see debit card purchase  
14 01/08, 4:12 p.m. and the date is 1/12.

15 Can you highlight that, Mr. McLeod? Thank you.

16 And it says beneath it, Circle Wallet star Eaze  
17 London; do you see that?

18 A. Yes.

19 Q. And do you recognize that descriptor?

20 A. Yes.

21 Q. And it's for -- and what is it? I'm sorry.

22 A. It is a descriptor that Circle would have used for when we  
23 initiate one of those top-up wallet transactions.

24 Q. Got it. And next to that it says the amount subtracted is  
25 \$71.03, correct?



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Reginatto - Direct

1 A. Correct.

2 Q. All right. You can take that down, Mr. McLeod. Can we go  
3 to Akhavan Exhibit 11,025.

4 Again, does this appear to you to be a bank statement?

5 A. Yes, it does.

6 Q. And at the top, does it say Bank of America?

7 A. Yes.

8 Q. So fair to say this appears to be a Bank of America  
9 statement, correct?

10 A. Correct.

11 Q. Can we turn to the fourth page of that document. Can we  
12 highlight at the top just the part that is unredacted.

13 And you see that it says 10-30-20, check card 1029,  
14 Circle wallet star Eaze London, a series of numbers, minus  
15 40.75; do you see that?

16 A. Yes.

17 Q. And do you recognize that descriptor?

18 A. Yes. It's the same descriptor that would have been  
19 initiated by a Circle Wallet top-up transaction.

20 Q. And can you go to the bottom of that page, Mr. McCleod, and  
21 highlight what appears at the bottom, unredacted. It says,  
22 service fees, and then it says 10-30-20, check card 10-29,  
23 Circle Wallet star Eaze London, and beneath that, it says  
24 international transaction fee, minus \$1.22.

25 So let me ask you, do you believe that was a charge

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Reginatto - Direct

1 made by Circle to this customer?

2 A. I don't believe so because it seems to be the service fee  
3 section of the statement. I wouldn't believe that would have  
4 been initiated by Circle.

5 Q. Thank you. You can take that down, Mr. McLeod. If you can  
6 put up Akhavan Exhibit 11,026.

7 Again, this is another Bank of America, and I'll go --  
8 again, it appears to be a statement of Bank of America, yes?

9 A. Yes, it does.

10 Q. And then can we turn to page 4 of 5, and can we highlight  
11 just the middle. Just the middle section, Mr. McLeod.

12 And again, 9/21/20, check card, Circle Wallet star  
13 Eaze London, minus \$54.55. Is that the same descriptor that  
14 you discussed before?

15 A. Yes, it seems to be the same.

16 Q. And then in the next page -- just the middle, Mr. McLeod --  
17 do you see 9/21/20, check card 0919, Circle Wallet star Eaze  
18 London, international transaction fee, minus \$1.54. I believe  
19 you testified that you do not believe those transaction fees  
20 are charged by Circle Wallet, correct?

21 A. That is correct. I do not believe those would be fees that  
22 we initiated.

23 Q. Do you have an understanding who charges those fees?

24 A. My understanding is that that is the bank charging that  
25 fee.

L3JPWEI3

Reginatto - Direct

1 Q. In this case, Bank of America, correct?

2 A. Correct.

3 Q. All right. And let's go to the last document, which is  
4 Akhavan Exhibit 11,027. And do you see at the top of that  
5 page, do you see Chase?

6 A. Yes.

7 Q. And Chase is a U.S. bank, right?

8 A. Yes.

9 Q. Sometimes called JP Morgan Chase, as its says beneath it?

10 A. Correct.

11 Q. Does this appear to be a bank statement?

12 A. It does appear to be, yes.

13 Q. And if you go to the bottom half of that page, Mr. McLeod,  
14 and you highlight the section that says "card purchase."

15 Can you see that?

16 A. Yes.

17 Q. And it says 12/04, and card purchase 12-02, Circle Wallet  
18 star Eaze London, card, minus \$85.38. Again, do you recognize  
19 that descriptor?

20 A. Yes.

21 Q. And that's the same descriptor you testified before about  
22 as reflecting debit card purchase of Circle Wallet star Eaze  
23 products, correct?

24 A. Correct.

25 Q. Okay. Mr. McLeod, you can put that down.

L3JPWEI3

Reginatto - Direct

1 Just a couple last questions, Mr. Reginatto. As part  
2 of Circle's business, are you aware of any business  
3 partnerships that Circle enters into with other companies?

4 MR. FOLLY: Objection, 401, 403.

5 MR. BURCK: Your Honor, I can lay a better foundation.

6 THE COURT: Yes.

7 BY MR. BURCK:

8 Q. So, Mr. Reginatto, we've just spent -- you've testified  
9 about the credit card or debit card business that Circle is  
10 involved in with Eaze, correct?

11 A. Correct.

12 Q. And as part of that business, you have relationships with  
13 credit card companies?

14 A. No. I wouldn't say we have direct relationships with  
15 credit card companies as part of that business, no.

16 Q. Okay. Do you have any partnerships with credit card  
17 companies?

18 A. We do have, yes.

19 Q. And would one of those companies be Visa?

20 A. That is correct, yes.

21 Q. So you have a partnership with Visa, is that your  
22 testimony?

23 A. Yes.

24 Q. And approximately when did that begin?

25 THE COURT: Well, before you answer that question.

L3JPWEI3

Reginatto - Direct

1 What is the nature of this partnership?

2 THE WITNESS: The nature of the partnership is around  
3 a cryptocurrency that Circle issues that's called USD coin or  
4 USDC, the cryptocurrency that is pegged to the value of the  
5 U.S. dollar. And Visa has some ambitions around developing  
6 future products that are around that cryptocurrency, and that's  
7 what the partnership is around.

8 THE COURT: I don't think a sufficient foundation has  
9 been laid for the ultimate question that you wanted to put, but  
10 if you want to try again, go ahead.

11 MR. BURCK: Your Honor, I'd have to ask him about the  
12 cryptocurrency in order to --

13 THE COURT: That's all right.

14 BY MR. BURCK:

15 Q. The USD coin cryptocurrency you just testified about as to  
16 Visa, right? Did you just testify to that?

17 A. Yes.

18 Q. Is that the same cryptocurrency that you use with Eaze?

19 A. Yes, that's the same cryptocurrency that we use in our  
20 digital wallet for all of our customers, yes.

21 MR. BURCK: Your Honor, is that a sufficient  
22 foundation?

23 THE COURT: What's the government's view?

24 MR. FOLLY: Your Honor, I still object. I don't think  
25 there's any foundation that Visa is involved in any of the

L3JPWEI3

Reginatto - Cross

1 current transactions.

2 THE COURT: I agree. Sustained.

3 MR. BURCK: No further questions, your Honor.

4 THE COURT: Anything from Mr. Weigand's counsel?

5 MR. GILBERT: No, your Honor.

6 THE COURT: Cross-examination?

7 CROSS-EXAMINATION

8 BY MR. FOLLY:

9 Q. Good morning, Mr. Reginatto. Can you hear me?

10 A. I can hear you, yes.

11 Q. Okay. Good morning.

12 A. Good morning.

13 Q. You testified on direct examination about some Eaze  
14 transactions that went through Circle; do you recall that?

15 A. Yes.

16 Q. And Circle did not have any involvement with Eaze's card  
17 processing activities in 2016 through 2019, correct?

18 A. That is correct.

19 Q. Can you walk us through the different steps that take place  
20 in a debit card Eaze purchase through the Circle platform?

21 A. Sure. So Eaze collects on their product a set of  
22 information and that typically involves information about their  
23 consumer, their end user and the end user's payment details.

24 They send an instruction to Circle's platform to  
25 charge that end user's payment method. In this case, a debit

L3JPWEI3

Reginatto - Cross

1 card. We, in conjunction with our acquiring processor, charge  
2 that card. And then Eaze also instructs us to either create a  
3 digital wallet for that end user, if it is the first time that  
4 they're using the marketplace, or perhaps they might tell us  
5 about a previously created digital wallet for that end user.  
6 And so we proceed to charge that payment method, and deposit  
7 funds into that end user's, or "buyer" as they call it, digital  
8 wallet.

9 Subsequently Eaze instructs us to make a payment from  
10 that buyer's digital wallet to what they call a seller digital  
11 wallet, and so we perform that movement of funds on our part.

12 Q. In the first stage of the transaction, is the Eaze customer  
13 purchasing a cryptocurrency?

14 A. Yes. The way that we architect our platform is that in  
15 that case, the user is purchasing cryptocurrency for the  
16 purpose of depositing that into the digital wallet.

17 Q. So focusing again just on the first phase of the  
18 transaction, where you just described the customer purchasing a  
19 cryptocurrency. In that first stage, are the customer's funds  
20 sent from the customer's issuing bank to Circle's acquiring  
21 bank account?

22 A. Yes. That is the way that it works, correct.

23 Q. Who is the merchant for that transaction?

24 A. That's us, Circle.

25 Q. Can you explain for us just briefly what a cryptocurrency

L3JPWEI3

Reginatto - Cross

1 is?

2 A. Yes. A cryptocurrency is a digital asset that exists on  
3 public internet area searchers called the block chains.  
4 Essentially it's a representation of card values, such as  
5 money, on these public internet networks.

6 MR. FOLLY: At this time, the government is offering  
7 self-authenticated record HAX14001.

8 MR. BURCK: Your Honor, I'm just trying to see what it  
9 is. No objection, your Honor.

10 MR. FOLLY: Can we publish that?

11 THE COURT: I'm sorry, I only heard one --

12 MR. GILBERT: No objection, your Honor.

13 THE COURT: Thank you. Received.

14 (Defendant's Exhibit HAX14001 received in evidence)

15 THE COURT: Go ahead.

16 BY MR. FOLLY:

17 Q. Is that also being published to the jury? Thank you.

18 Can you explain what this Stablecoin Platform Services  
19 Agreement is?

20 A. I believe this is the service agreement that was  
21 established between Circle and Eaze for the provision of our  
22 platform service.

23 Q. And focusing just on the -- do you see the introduction  
24 clause?

25 A. Yes.



L3JPWEI3

Reginatto - Cross

1 Q. Can you just read that first sentence?

2 A. Sure. "Eaze desires to engage Circle to provide access to  
3 certain USDC or other stablecoin wallet and payments platform  
4 services as defined below for Eaze and the buyers and sellers  
5 (collectively 'users') of merchandise acting within the Eaze  
6 platform."

7 Q. Can we please turn to the fourth page, and scrolling down  
8 to 2(b). If we could enlarge 2(b). 2(b) in the first part  
9 says: "The platform services shall, at a minimum, enable an  
10 integrated payment experience that allows: (i) a buyer to  
11 exchange fiat for Circle credits from Circle through the Eaze  
12 website; (ii) a buyer to send those Circle credits to a seller  
13 in a separate transaction using wallet infrastructure  
14 integrated into and operated through the buyer's Eaze account;  
15 and (iii) to provide services to the seller that allows  
16 management of the Circle credits, conversion of Circle credits  
17 to USDC and redemption of USDC into fiat."

18 So focusing on the first part of the transaction, is  
19 that what you described earlier, where the Eaze customer  
20 purchases a cryptocurrency?

21 A. Yes, that is correct.

22 Q. Can you explain how the second phase of the transaction  
23 works?

24 A. So once a digital wallet has a positive balance, Eaze can  
25 instruct us to transfer funds, basically, from one digital

L3JPWEI3

Reginatto - Cross

1 wallet to the other. In their case, I believe they do that  
2 from a buyer's digital wallet to a seller's digital wallet.

3 Q. In that case, is that a transfer of cryptocurrency funds?

4 A. Yes. The only difference that we qualify internally is  
5 when a transfer of digital currency happens between two digital  
6 wallets that are on our platform, we consider that what we call  
7 an internal transfer. So essentially, that's a ledger update,  
8 and that's just to differentiate because these digital  
9 currencies, these cryptocurrencies they can also be transferred  
10 outside of the Circle platform. They are intraoperative with  
11 other platforms.

12 Q. So that's an internal cryptocurrency transfer?

13 A. Correct.

14 Q. In that second part of the transaction, the internal  
15 cryptocurrency part, is any information sent to the Eaze  
16 customer's issuing bank?

17 A. No, not at all.

18 Q. Is the Eaze customer's issuing bank required to make any  
19 decision at that point?

20 A. No, not at all.

21 Q. What about Visa, is any information sent to Visa at that  
22 second page?

23 A. No, absolutely not.

24 Q. Is Visa required to make any decision at that point?

25 A. No.

L3JPWEI3

Reginatto - Cross

1 Q. Lastly, what about MasterCard, is any information sent to  
2 MasterCard during the second phase of the transaction?

3 A. No.

4 (Continued on next page)

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L3JPWEI3

Reginatto - Cross

L3JAWEI4ps

Reginatto - Cross

Q. Is MasterCard involved in any way in that second phase of the transaction?

A. No, not at all.

Q. Is this second phase of the transaction sent through any of the card networks?

A. No. They don't touch the card networks at all.

Q. Now, in this particular situation with Eaze, the seller wallets that you described, are those the dispensary wallets?

A. Yes, that is correct. They are wallets that belong to another business, a dispensary in that case, yes.

Q. I want to ask you some questions about the due diligence process that Circle performs when it has a merchant such as Eaze. Circle performs due diligence before it onboards any new merchants; is that right?

A. Yes. That is correct.

Q. How long does that due diligence process typically last?

A. It can typically last from under a month, so a few weeks, all the way up to three, four, five months sometimes.

Q. When Circle onboards a new merchant, the compliance department is consulted as part of that process, correct?

A. Yes, that is correct.

Q. The legal department is also consulted as part of that process, correct?

A. Yes, correct.

L3JPWEI3

Reginatto - Cross

1 Q. It's important to Circle that it receive truthful  
2 information from the merchants that it onboards, correct?

3 A. Yes, absolutely.

4 Q. I believe you testified you have worked at the company  
5 since approximately 2015; is that right?

6 A. Yes, that's correct.

7 Q. During that time period, have you ever become aware of a  
8 situation where Circle was lying to any banks?

9 A. No, I have not, no. No.

10 Q. I'd like to ask you to look at HAX14008.

11 MR. FOLLY: We could also publish that to the jury.

12 Just give me one moment.

13 Q. Now, all these transactions took place in 2020 or later.  
14 Correct?

15 A. Yes. That's correct.

16 Q. And you see where it says "issuer name"?

17 A. Yes.

18 Q. Circle did not lie to any of these issuing banks, correct?

19 A. That's correct.

20 Q. Circle did not use fake merchant names for any of the  
21 transactions that are depicted here, correct?

22 A. No, it has not.

23 Q. Circle did not use misleading descriptors for any of the  
24 transactions that are depicted here, correct?

25 A. That's correct.

L3JPWEI3

Reginatto - Cross

1 Q. Circle did not use misleading MCC codes for any of the  
2 transactions that are depicted here, correct?

3 A. That's correct.

4 MR. FOLLY: If we can show for the witness HAX11009.

5 Q. Do you see in the middle there's a merchant category code  
6 listed there, correct?

7 A. Correct.

8 Q. 6540, right?

9 A. Yes.

10 Q. And that describes "stored value card purchase or load,"  
11 correct?

12 A. Correct.

13 Q. And to your understanding that's an accurate description of  
14 this transaction, correct?

15 A. I believe that to be absolutely correct, yes.

16 Q. And Circle consistently uses the same MCC code, correct?

17 A. Yes, exactly.

18 MR. FOLLY: If we could turn to Government Exhibit  
19 2309, at page 4. If we could focus on the second and the --  
20 sorry -- the third and the fourth columns.

21 Q. Do you have those in front of you there?

22 A. I do, yes.

23 Q. You're not aware of Circle ever using the "freight carrier  
24 trucking" MCC code for any of the Eaze transactions, correct?

25 A. No, absolutely not.

L3JPWEI3

Reginatto - Cross

1 Q. You're not aware of Circle ever using the "cosmetic stores"  
2 MCC code for any of the Eaze Circle transactions, correct?

3 A. That is correct.

4 Q. You're not aware of Circle ever using the "clock, jewelry,  
5 watch, and silverware" MCC code for any of the Eaze  
6 transactions, correct?

7 A. That's correct.

8 Q. You're not aware of Circle ever deliberately using  
9 misleading MCC codes, correct?

10 A. That's correct.

11 MR. FOLLY: We could take that down.

12 Q. You're not also not aware of Circle ever creating fake  
13 websites to disguise the nature of its business activities from  
14 banks, correct?

15 A. That's correct.

16 Q. You're not aware of any situation where Circle deliberately  
17 deceived any banks, correct?

18 A. Absolutely correct, yes.

19 Q. You're also not aware of any instance where Circle  
20 processed transactions in the name of a different merchant,  
21 correct?

22 A. Yes, that's correct.

23 Q. You're not aware of any situation where Circle purchased a  
24 shell company for the purpose of processing Circle's Eaze  
25 transactions, correct?

L3JAWEI4ps

Reginatto - Redirect

1 A. Yeah, absolutely correct.

2 MR. FOLLY: Just a moment, your Honor.

3 No further questions.

4 THE COURT: Anything else?

5 MR. BURCK: Very briefly, your Honor.

6 REDIRECT EXAMINATION

7 BY MR. BURCK:

8 Q. Mr. Reginatto, can you hear me OK?

9 A. I can, yes.

10 Q. Great. I just want a few questions. You were asked on  
11 cross-examination about the cryptocurrency that is part of the  
12 Circle-Eaze integrated platform, right?

13 A. Correct.

14 Q. You described in some detail how that works, the mechanics  
15 of it, right?

16 A. The mechanics of the cryptocurrency?

17 Q. Yes. You guys -- I'm asking -- you described that in your  
18 cross-examination, right?

19 A. Oh. Apologies. I did, yes.

20 Q. OK. Now, when a buyer -- and I think -- let's turn to  
21 HAX14001, which you were asked about, page 4, section 2, and  
22 then under B. Just highlight that paragraph, Mr. McLeod.

23 Do you see, Mr. Reginatto, you were asked and you  
24 testified about this paragraph?

25 A. Yes.



L3JAWEI4ps

Reginatto - Redirect

1 Q. And it says, "the platform services" -- which refers to the  
2 Circle platform services, right?

3 A. Correct.

4 Q. -- "shall at a minimum enable an integrated payment  
5 experience that allows" the buyer to do various things, right?

6 A. Yes.

7 Q. Now, it's your understanding that the buyer presses a  
8 button on Eaze and all of this happens instantaneously. Right?

9 A. I, I believe that is the way that Eaze has implemented our,  
10 our platform services. It's a diagnostic to how our customer  
11 builds their user experience. We, although we do provide, you  
12 know, the ability for them to process these payments, top up  
13 the digital wallets, and then transfer funds across the digital  
14 wallets, we don't control the end user experience.

15 Q. Got it. But as you understand it, it's a press of a button  
16 by a buyer, correct?

17 A. I, I believe that's the way it works on the Eaze  
18 marketplace, yes.

19 Q. And it takes nanoseconds, correct?

20 A. I would say it's pretty, pretty short in time, yes.

21 Q. OK. So all the mechanics you were talking with the  
22 government, about cryptocurrency going here and there and  
23 everywhere, that's the details of the software, of the  
24 algorithms that you use.

25 A. Those are the mechanics of how our platform works, correct.

L3JAWEI4ps

Reginatto - Redirect

1 Q. Got it. Now, let's talk about it --

2 MR. BURCK: You can take that down, Mr. McLeod.

3 Q. You were also asked about the mechanics as it relates to  
4 Visa or MasterCard or issuing banks, right?

5 A. Correct.

6 Q. And I think you testified that they're not aware of all of  
7 this cryptocurrency mechanics that you discussed. Is that  
8 right?

9 A. That is correct.

10 Q. So all they see is a debit from the customer's account for  
11 a certain amount. Correct?

12 A. Yes. I believe that's correct.

13 Q. And that amount corresponds to the amount of marijuana they  
14 bought from Eaze. Correct?

15 A. In this, in this case, yes, from our perspective, that  
16 amount is presented as the amount that is going to be deposited  
17 on a -- on a digital wallet.

18 Q. Now, you told us that you're in the fintech business,  
19 right?

20 A. Correct.

21 Q. And that's the financial technology business, right?

22 A. Yes.

23 Q. And so you in part provide financial services to your  
24 customers, correct?

25 A. Yes, that's correct.

L3JAWEI4ps

Reginatto - Redirect

1 Q. And that includes Eaze, right?

2 A. Correct.

3 Q. And you know that Eaze is a deliverer of marijuana, right?

4 A. Yes, I'm aware of that, yes.

5 Q. And you're aware that are marijuana is lawful in  
6 California, correct?

7 A. Correct.

8 Q. And you are also aware that it is illegal under federal  
9 law. Correct?

10 A. I am aware of that, yes.

11 Q. And Circle is not concerned about the illegality, the  
12 illegality, of marijuana under federal law and providing  
13 services to Eaze, is it?

14 MR. FOLLY: Objection, 401, 403.

15 THE COURT: Sustained.

16 Q. Now, you were asked some questions about -- I would like to  
17 go to HAX11009. And you see in the middle there, you were  
18 asked about this document, both on direct and cross?

19 A. Yes.

20 Q. And you see in the middle the merchant category is "stored  
21 value card purchase or load"?

22 A. Yes.

23 Q. And beneath that it says "merchant category code: 6540"?

24 A. Yes.

25 Q. And you testified that that is the merchant category code

L3JAWEI4ps

1 that corresponds with "stored value card purchase or load,"  
2 right?

3 A. Correct.

4 Q. Is a "stored value card purchase or load" also sometimes  
5 referred to as "quasi cash"?

6 A. Yes. I believe I've seen that term. Yes.

7 MR. BURCK: No further questions, your Honor.

8 THE COURT: Anything else?

9 MR. FOLLY: No, your Honor.

10 MR. GILBERT: No, your Honor.

11 THE COURT: Thank you very much.

12 (Witness excused)

13 THE COURT: Maybe we can pause here for a moment and  
14 take this equipment down.

15 (Pause)

16 THE COURT: All right. Anything else from counsel for  
17 Mr. Akhavan?

18 MR. BURCK: Your Honor, can you hear me?

19 THE COURT: Yes.

20 MR. BURCK: Your Honor, we're not sure what your  
21 practice is on renewing Rule 29. But we renew it at this  
22 point.

23 THE COURT: No, no, no. We'll get to that in a  
24 minute. I'm just saying, do you rest?

25 MR. BURCK: We rest, your Honor.

L3JAWEI4ps

MR. GIBERT: We rest, your Honor.

THE COURT: All right. Very good.

Anything else from the government?

MS. LA MORTE: No, your Honor.

THE COURT: So the government rests as well.

MS. LA MORTE: Yes.

THE COURT: OK.

Ladies and gentlemen, it would not make sense, I think, to start closing arguments now, although we've made great progress for the day, as you can see. But I think the game plan is, we will have all of the closing arguments on Monday. Then we'll take the whole day. On Tuesday morning bright and early I will give you my instructions of law. That will take about a half hour. And so at around 10:15 on Tuesday, the case will be yours to deliberate upon.

So I think it makes sense to excuse you now for the day. Please have a terrific weekend. Since you have all this extra time, I know that several of you are going to shop online for more colorful clothes -- and in any event, in all seriousness, have a terrific weekend. We'll see you at 9:45 on Monday.

(Jury not present)

THE COURT: All right. So you made the jury's day. That's for sure.

All right. Please be seated. So I think we can have

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1 the charging conference now earlier. So what I'll do is, I  
2 will get you my draft charge by 12:45. We'll just email it to  
3 you. And why don't we have the charging conference at 2  
4 o'clock. And that way we don't have to worry about getting  
5 together late in the day.

6 So very good. I'll see you all at 2 o'clock.

7 MR. BURCK: Thank you, your Honor.

8 MS. LA MORTE: Thank you.

9 MR. BURCK: Oh, your Honor, I'm sorry. The Rule 29?  
10 How would you like us to handle that, the renewal of the Rule  
11 29?

12 THE COURT: Yes, yes. This is the right time for it.  
13 So it would be a terrible mistake for defense counsel for both  
14 defendants not to renew their Rule 29 motions at this time and  
15 thus lose all sorts of appellate rights that they otherwise  
16 want to preserve. And that's why I'm glad that both  
17 Mr. Akhavan's counsel and, by sign language, Mr. Weigand's  
18 counsel have made the motion, and it would be equally terrible  
19 if I were to grant the motion, so I'm going to deny it.

20 MR. BURCK: Thank you, your Honor.

21 THE COURT: Very good.

22 (Luncheon recess)

23 (Continued on next page)

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25 A F T E R N O O N S E S S I O N

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2:00 p.m.

(Jury not present)

THE COURT: My law clerk tells me that the government for some reason got my charge much later than defendants.

MS. LA MORTE: I think it's some firewall issue.

THE COURT: His liberal leanings were such that he preprograms it so it only goes to the government long after the defense.

THE LAW CLERK: Objection.

THE COURT: But I can give you more time if you want it. But if not we'll start now.

MR. FOLLY: Yes. We think it makes sense to go ahead and proceed.

THE COURT: OK. Let's do it.

All right. So with respect to the general instructions 1 through 8, they are pretty much my standard instructions. I'll ask each side, each party, to give me any objections, positions, or other comments. But I don't want any rounds of this. Tell me all that you have to say.

So with regard to 1 through 8, anything from the government?

MR. FOLLY: No, your Honor.

THE COURT: Anything from Mr. Gilbert?

MR. GILBERT: No, your Honor.

THE COURT: Anything from Mr. Tayback?

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1 MR. TAYBACK: No, your Honor.

2 THE COURT: Very good.

3 Now, with respect to -- we'll break it down here  
4 charge by charge, beginning with no. 9. I see one typo at the  
5 very top of the page 14 charge. It says "the charges." It  
6 should be changed to "the charge." It's already been changed  
7 in the table of contents. I don't know why it wasn't changed  
8 here. This is a very serious error. I will have to take this  
9 up with my law clerk as soon as we adjourn.

10 OK. Any objections to no. 9? Any more comments?  
11 Anything from the government?

12 MR. FOLLY: No, your Honor.

13 THE COURT: Anything from Mr. Gilbert?

14 MR. GILBERT: No, your Honor.

15 THE COURT: Anything from Mr. Tayback?

16 MR. TAYBACK: No, your Honor.

17 THE COURT: Charge 10. Anything from the government?

18 MR. FOLLY: No, your Honor.

19 THE COURT: Anything from --

20 (Pause)

21 MR. FOLLY: Oh, yes. Sorry. This interconnects with  
22 another subsequent one. Our understanding of the law is that  
23 1349 does not require an overt act, and that is also included  
24 on page 21.

25 THE COURT: OK. I didn't bother, to tell you the



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1 truth, to look at that. I'm delighted to remove that if all  
2 parties are agreed overt act is required.

3 MR. GILBERT: That is our understanding, your Honor.

4 MR. TAYBACK: Yes, your Honor.

5 THE COURT: OK. So we'll change it so now it reads,  
6 "In order for a given defendant to be guilty of the charge of  
7 conspiracy to commit federal bank fraud, the government must  
8 prove beyond a reasonable doubt each of the following two  
9 elements:

10 "First, the existence of a conspiracy to commit  
11 federal bank fraud at any time during the charged time period  
12 of 2016 through 2019;

13 "Second, that the defendant you are considering  
14 knowingly, willfully, and with specific intent to defraud  
15 joined and participated in the conspiracy" --

16 I'm sorry. After "2019" in the previous paragraph,  
17 there's a semicolon and then add the word "and," "and second."  
18 Then after the word "conspiracy in the next paragraph, period  
19 after the word "conspiracy" and strike "and." Strike the  
20 entire next paragraph. And finally, "I will now instruct you  
21 regarding each of these two elements."

22 OK. Anything else from anyone on instruction no. 10?

23 MR. TAYBACK: No.

24 MR. GILBERT: No, your Honor.

25 THE COURT: Very good. Instruction no. 11. Anything

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1 from the government?

2 MR. FOLLY: No, your Honor.

3 THE COURT: Anything from Mr. Gilbert?

4 MR. GILBERT: No, your Honor.

5 THE COURT: Anything from Mr. Tayback?

6 MR. TAYBACK: No, your Honor.

7 THE COURT: Very good.

8 Instruction no. 12. Anything from the government?

9 MR. FOLLY: Yes, your Honor.

10 THE COURT: Go ahead.

11 MR. FOLLY: There were a few additional items that  
12 your Honor had included in the preliminary instruction that we  
13 believe are appropriate to include in the full charge as well,  
14 including that the government does not need to prove that a  
15 bank suffered any financial loss, as well as --

16 THE COURT: I thought I had that in later. But  
17 maybe -- hold on a second. But I'm wrong. So that should go  
18 under the first element.

19 "Also" -- this will be at the end of the paragraph  
20 that begins with the words "as to the first element," after the  
21 word "federally insured." Also, it is not necessary -- well,  
22 it's really, the place to put it is in the conspiracy. So I  
23 think the place to put it is on page 19, instruction no. 11, as  
24 part of that. So when we get to that I'll suggest some  
25 wording.

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1 MR. GILBERT: Your Honor, I think you said no. 11 on  
2 page 19. I think you meant no. 13 on page 19.

3 THE COURT: Yes, thank you very much. Under no. 13 on  
4 page 19. So we'll take that up when we get there.

5 Anything else, to come back to instruction no. 12,  
6 anything else from the government?

7 MR. FOLLY: Your Honor, in the preliminary charge,  
8 there is also the inclusion of the fact that the government  
9 does not need to prove reliance on a misrepresentation. And we  
10 think that should also be included in the final charge as well.

11 THE COURT: OK. I'm sorry I didn't look back at this  
12 as I was doing -- I think the language in the preliminary  
13 instruction on the first page of the preliminary instruction,  
14 in the third and fourth paragraphs, is actually better than  
15 what I have here, in the following respects. There is a  
16 sentence in the preliminary charge, "Here, the alleged bank  
17 fraud object was a scheme to deceive U.S. banks into  
18 effectuating credit and debit card purchases of marijuana by  
19 disguising those purchases as being for other goods." I think  
20 that's maybe a better description of it.

21 If we look at page 12.

22 MS. LA MORTE: You mean instruction 12?

23 THE COURT: I'm sorry. Page 17, instruction 12.  
24 Thank you. I don't have ten fingers. I can't go above that.

25 I think the sentence I just read -- "here, the alleged

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1 bank" and so forth -- should go after the first sentence of the  
2 sentence beginning "as to the first element."

3 So it will now read as follows: "As to the first  
4 element, a scheme to defraud a bank or credit union means a  
5 scheme to use one or more misrepresentations to obtain money or  
6 property from a bank or credit union." And then we would  
7 adhere, "The alleged bank fraud was a scheme to deceive  
8 U.S.-based banks into effectuating credit and debit card  
9 purchases of marijuana by disguising those purchases as being  
10 for other kinds of goods."

11 Actually, I don't think we have to say "U.S.-based  
12 banks" because we go on to say it has to be a federally insured  
13 bank. So, "A federally insured bank is one that is insured by  
14 the Federal Deposit Insurance Corporation, and a federally  
15 insured credit union is one that is insured by the National  
16 Credit union Share Insurance Fund. However, the perpetrator of  
17 a federal bank fraud is not required to personally know that  
18 the bank or credit union was federally insured. Also" -- here  
19 we would pick up with the preliminary charge -- "the government  
20 does not need to prove that the scheme succeeded but only that  
21 it was planned. Also, the government does not need to prove  
22 that a bank or credit union suffered any financial loss."  
23 Let's take it directly from the preliminary charge.

24 So I think that incorporates both the things you asked  
25 for. Yes?

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1 MR. FOLLY: Yes, your Honor.

2 THE COURT: I'm sorry --

3 MR. FOLLY: And then there is an additional --

4 THE COURT: And then there's -- you also ask for the  
5 reliance part. I think that should come as the second element.  
6 "As to the second element, a material fact, as applicable here,  
7 is a fact that a reasonable banker would be reasonably likely  
8 to consider in making a decision concerning a bank transaction  
9 involving the transfer of money or property. For example,"  
10 etc.

11 I think it would go at the very end of that paragraph,  
12 carrying over to page 18 at the top. "Further, the government  
13 does not need to prove that any bank actually relied on a  
14 misrepresentation."

15 OK? Anything else from the government?

16 MR. FOLLY: Your Honor, yes. There is an additional  
17 item that the government wanted to address. Under the section  
18 2 portion of the statute, the case law is clear that the false  
19 statement does not need to be made directly to the bank, and  
20 there has been a fair amount of cross-examination, I think,  
21 sort of eliciting testimony that there was sort of an attempt  
22 to distance the defendants from the issuing banks in the United  
23 States. We would still like the ability, if the false  
24 statement is made to -- not to the issuing bank but, rather, to  
25 the acquiring bank or to Visa and MasterCard, as long as that

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1 false statement was the mechanism through which the issuing  
2 bank parted with the money, that is still sufficient. So we  
3 would like to incorporate that concept, that the --

4 THE COURT: Yes. I'm fine with that but not with the  
5 language you just gave me.

6 MR. TAYBACK: Your Honor, I believe the last three  
7 words of this instruction 12 addresses that, "directly or  
8 indirectly."

9 THE COURT: Let me see.

10 I'm sorry. Where are you referring to?

11 MR. TAYBACK: Page 18, under the description of the  
12 third element, I think you incorporate "directly or  
13 indirectly." The last sentence.

14 THE COURT: Well, that was the reason I put in  
15 "directly or indirectly." But I think what the government  
16 thinks is, it should be a little bit further elaborated.

17 So how about -- I'll tell you where I'll put this in a  
18 minute -- "Also, the government does not need to prove that the  
19 misrepresentations were made directly to a federally insured  
20 bank or credit union, but only that the misrepresentations  
21 influenced the federally insured banks or credit unions in  
22 processing the transactions." How about that?

23 MS. LA MORTE: One minute.

24 MR. FOLLY: Your Honor, I think the government's only  
25 request would be to use the "by means of" language that's

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1 included in the statute.

2 THE COURT: Well, you know, that's fine, but I want,  
3 from all the parties here, specifically what you want me to  
4 say.

5 MR. FOLLY: Yes, your Honor.

6 THE COURT: Don't just tell me, oh, use the language  
7 in the statute. What, in the sentence I just read to you, what  
8 do you want to change, and how?

9 MS. DEININGER: Your Honor, I think we would propose  
10 that the sentence you proposed stay the same until you said  
11 that "only that the misrepresentations were the means by which  
12 the federally insured banks or credit unions were induced to  
13 part with money in their control."

14 THE COURT: OK. So "only that the  
15 misrepresentations" --

16 MS. DEININGER: Mm-hmm. And instead of saying  
17 "influenced" just say "were the means by which."

18 THE COURT: It's "a means," right? It's not the only  
19 means.

20 MS. DEININGER: "A means."

21 MS. LA MORTE: Yes, your Honor, you're correct.

22 THE COURT: "Were a means by which" -- what's the rest  
23 of it?

24 MS. DEININGER: Then going back to your language.

25 THE COURT: -- "the federally insured banks or credit

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1 unions" --

2 MS. DEININGER: -- "were induced to" --

3 THE COURT: -- "were induced to process the  
4 transactions"?

5 MS. DEININGER: Yes. I think that works.

6 THE COURT: All right. I'll tell you what I'm going  
7 to do, because you did get this later than I thought you would.  
8 After we finish going over all the changes that we're going to  
9 discuss now, then I'll prepare a new draft that has all that,  
10 and we'll reconvene at 5 o'clock. And if there's any final  
11 objections, changes, whatever, you can give them to me at that  
12 time.

13 MS. LA MORTE: That would be great, your Honor.

14 THE COURT: And the defendants have already waived  
15 their appearance at that time?

16 MR. TAYBACK: Yes.

17 MR. GILBERT: Yes, your Honor.

18 THE COURT: All right. So anything else from the  
19 government on no. 12?

20 MS. LA MORTE: Just one moment, your Honor.

21 MR. FOLLY: Your Honor, one additional item we would  
22 like to raise is the inclusion of some specific charge -- and  
23 I'll provide a proposed charge -- regarding bank due diligence.  
24 And we had included a proposed charge on this. But something  
25 to the effect of, "It also does not matter whether any of the



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1 banks involved might have discovered the fraud had the bank  
2 probed further. If you find that a scheme or artifice existed,  
3 it is irrelevant whether you believe that any of the banks" --

4 THE COURT: That's much too wordy. As you can see  
5 from my charge, I try to keep it simple. The due diligence  
6 argument has never been directly raised by the defense in those  
7 words because I excluded it by my motion in limine, and they're  
8 not going to raise it in their summation because they don't  
9 want to be held in contempt of court. So I don't really see  
10 the need for that. If it is raised during summation in some  
11 indirect way, I can always give a, right then and there, sua  
12 sponte, an instruction along the lines you're talking about.  
13 But I think it's overkill here. So I won't add that.

14 Anything else from the government on no. 12?

15 MR. FOLLY: No, your Honor.

16 THE COURT: OK. Anything from Mr. Gilbert on no. 12?

17 MR. GILBERT: Yes, your Honor. At the end of the  
18 sentence that ends "national credit unions share insurance  
19 fund," in the paragraph beginning "as to the first element" --

20 THE COURT: Yes.

21 MR. GILBERT: -- "we would request that you include  
22 the following: "I instruct you that Visa, MasterCard, and banks  
23 outside the United States are not insured by the FDIC or  
24 National Credit Union Share Insurance Fund."

25 MR. TAYBACK: Your Honor, we join, and we have a

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1 written piece of paper we can hand up.

2 MR. GILBERT: The proposal that Mr. Tayback is about  
3 to hand you is acceptable to us as well.

4 THE COURT: Well, the trouble with what you've given  
5 me here is, I think to make it balanced, I would have to say,  
6 "However, Citibank," so forth, list the banks that are  
7 federally insured. If you want me to do that I'm happy to do  
8 it. But I sort of like Mr. Gilbert's approach, which would be  
9 simply to say "banks outside of the U.S. are not" -- "banks and  
10 credit unions" -- "are not federally insured." How about "nor  
11 are credit card companies"?

12 MR. GILBERT: Visa and MasterCard -- that's fine, your  
13 Honor.

14 THE COURT: All right. I will add that.

15 OK. Anything else, Mr. Gilbert, on instruction 12?

16 MR. GILBERT: Yes. In the paragraph beginning "as to  
17 the second element" --

18 THE COURT: Go ahead.

19 MR. GILBERT: -- we would propose, where it says "a  
20 reasonable banker" that it be edited to state "a reasonable  
21 U.S.-based issuing bank," which would be consistent with your  
22 preliminary instruction.

23 THE COURT: No. I think they understand. I think  
24 that's unnecessary surplus.

25 MR. GILBERT: And with regard to the sentence that

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1 begins, "for example, if a perpetrator" --

2 THE COURT: Yes.

3 MR. GILBERT: -- we would request that, after the  
4 phrase "look like the purchases of other goods," that you  
5 include the phrase "that such misrepresentations were  
6 transmitted to the bank."

7 So, in other words, it reads, "If a perpetrator made  
8 misrepresentations designed to make marijuana purchases look  
9 like the purchases of other goods" --

10 THE COURT: I don't understand that. Maybe I'm  
11 missing the point. Here's the full sentence. "For example, if  
12 a perpetrator made misrepresentations designed to make  
13 marijuana purchases look like the purchases of other goods, the  
14 misrepresentations would be material if, had the banker known  
15 that the purchases were disguised and were really for  
16 marijuana, rather than the other goods, such knowledge would be  
17 reasonably likely to influence a reasonable banker in deciding  
18 whether to process the purchases."

19 What more do you want?

20 MR. GILBERT: That's fine, your Honor. I would  
21 propose one other minor change then. Instead of "whether to  
22 process the purchases," we would suggest "whether to authorize  
23 the purchases." "Process" seems vague for this purpose and  
24 "authorize," I think, is more specific and related to the  
25 evidence from the banks.

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1 THE COURT: What does the government think about  
2 "authorize"?

3 MR. FOLLY: Your Honor, we don't have any objection  
4 with the change. We also think the language as it is is  
5 adequate as well.

6 THE COURT: All right. So I'll change it to  
7 "authorize."

8 Anything else on this charge from counsel for  
9 Mr. Weigand?

10 MR. GILBERT: No, your Honor.

11 THE COURT: Mr. Tayback?

12 MR. TAYBACK: Nothing that we haven't discussed.

13 THE COURT: You covered.

14 All right. On to instruction no. 13.

15 I will hear from the government first.

16 MR. FOLLY: We don't have anything on instruction  
17 no. 13.

18 THE COURT: OK. Mr. Gilbert?

19 MR. GILBERT: We would propose that in the paragraph  
20 that starts "however," in the sentence that starts "likewise"  
21 and ends "he would not be guilty of this conspiracy," that you  
22 add the following sentence: "Likewise, a genuine belief that  
23 the scheme never exposed the victim to loss or risk of loss in  
24 the first place would demonstrate a lack of fraudulent intent."

25 THE COURT: Yes. Let me hear that again?

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1 MR. GILBERT: "Likewise, a genuine belief that the  
2 scheme never exposed the victim to loss or risk of loss in the  
3 first place would demonstrate a lack of fraudulent intent."

4 THE COURT: Hold on a minute. Sorry. Let me turn on  
5 my LiveNotes here. "Likewise, a genuine belief that the scheme  
6 never exposed the victim to loss or risk of loss in the first  
7 place would demonstrate a lack of fraudulent intent."

8 Well, putting aside I don't like it in the first  
9 place, but putting aside that, what does the government think  
10 about that?

11 MR. FOLLY: Your Honor, we would oppose this addition.  
12 It seems inconsistent with the case law that actual loss to the  
13 bank is --

14 THE COURT: Well, I've added, as you suggested,  
15 language now about no one has to suffer loss.

16 MR. FOLLY: Right, your Honor.

17 THE COURT: What they're arguing here is that if you  
18 believe that your deceptions would not cause a -- actually,  
19 it's not the law, now that I think about it. "If you believe  
20 that your deceptions would not be" -- and I'm not going to add  
21 this -- "would not be material to the bank's decision regarding  
22 the transfer of money or property, then you lack fraudulent  
23 intent," etc. But that's different. And that's what the law  
24 is. You don't have to -- it's not a defense that, I never  
25 thought this would deprive him of any money. The defense, to

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1 the extent it exists in this context, is, I never thought that  
2 these lies would be material in influencing a reasonable banker  
3 to authorize transactions of money or property. That's all the  
4 law requires.

5 So I will not give the language that was just  
6 suggested.

7 MR. TAYBACK: Your Honor, just to be clear, on behalf  
8 of Mr. Akhavan we would join in the requested instruction, and  
9 our citation to authority would be *United States v. Calderon*.

10 THE COURT: *United States v. Calderon*.

11 MR. TAYBACK: *Calderon*, C-a-l-d --

12 THE COURT: *Calderon*?

13 MR. TAYBACK: Yes. 944 F.3d 72, 91 (2d Cir. 2019).  
14 That was in our proposed --

15 THE COURT: Yes. I remember that from your -- I'll  
16 take a look at it again. And if it says what you say it says,  
17 then I may put in the language.

18 MR. TAYBACK: Thank you.

19 THE COURT: But logically I just don't understand it,  
20 because what the statute requires just for bank fraud, before  
21 you even get to one step removed, which is conspiracy, what the  
22 bank fraud statute requires is a scheme for obtaining money or  
23 property, not a scheme for someone else to lose. The victim  
24 has to be injured in some sense. There's case law on that.  
25 But the injury comes from their being deprived of material

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1 information regarding the transfer of money or property.

2 That's always been my understanding of the statute,  
3 but I will look at *Calderon* and if I change my mind you'll see  
4 it in the next version.

5 MR. GILBERT: If I could just one additional citation  
6 on the same point.

7 THE COURT: Yes.

8 MR. GILBERT: *United States v. Starr*, 816 F.2d at 98.  
9 That's the Second Circuit, 1997.

10 THE COURT: OK. I will look at both of those.

11 All right. Now, instruction no. 14 will be removed.  
12 That's the overt act. And we'll renumber all the others  
13 accordingly.

14 Any objection to the venue instruction at page 22?  
15 Anything from the government?

16 MR. FOLLY: No, your Honor.

17 THE COURT: Anything from Mr. Gilbert?

18 MR. GILBERT: No, your Honor.

19 THE COURT: Anything from Mr. Tayback?

20 MR. TAYBACK: No, your Honor.

21 THE COURT: And I'll take them collectively. The  
22 remaining two instructions on communications with the Court,  
23 selection of foreperson, etc., at pages 23 and 24, anything  
24 from the government?

25 MR. FOLLY: No, your Honor.

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1 THE COURT: Anything from Mr. Gilbert?

2 MR. GILBERT: No, your Honor.

3 THE COURT: Anything from Mr. Tayback?

4 MR. TAYBACK: No, your Honor.

5 THE COURT: OK. Let's do the following. I will make  
6 my changes. I will have my law clerk have a look at those  
7 cases. I will have my law clerk send the new draft to the  
8 parties so that the defense can get them by, say, 3:30 and the  
9 government by 4:59, and we will reconvene at 5 o'clock for any  
10 final objection.

11 MR. FOLLY: Good.

12 THE COURT: Real good. Thanks very much.

13 (Recess)

14 (Jury not present)

15 THE COURT: OK. So you have my latest version of the  
16 charge, and this will be the final version except for any  
17 changes we make now. What I'm saying is, I will not accept any  
18 changes over the weekend. This is it.

19 By the way, I always give permission to counsel to  
20 refer to my charges in closing arguments. I know there are  
21 some courts that don't allow that, but I do. So you are free  
22 to quote any part of it. But that's another reason we need to  
23 put it in final today.

24 So anything further from the government?

25 MR. FOLLY: No, your Honor.



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1 THE COURT: Anything further from Mr. Gilbert?

2 MR. GILBERT: Yes, your Honor. Two minor requests,  
3 both on page 17. To be consistent with the change your Honor  
4 made to use the phrasing "authorize," on the second line on  
5 page 17, instead of "it was induced to process."

6 THE COURT: Yes, OK, I'll change that to "authorize."

7 MR. GILBERT: And two lines below that, it says "in  
8 making a decision concerning a bank transaction." We would  
9 request "making a decision authorizing a bank transaction."

10 THE COURT: Where is that? I'm sorry.

11 Oh, I see it. Yes.

12 MR. GILBERT: And I think that's all we have. Thank  
13 you.

14 THE COURT: All right. I will adopt both of those.

15 All right. Anything, Mr. Tayback?

16 MR. TAYBACK: The only other request is -- this is  
17 really just for the purpose of making a record -- the parties  
18 did previously file proposed instructions. To the extent the  
19 final instructions vary, may they be treated as objections to  
20 those instructions to the extent they vary so it's preserved?

21 THE COURT: Yes. Absolutely. And of course the  
22 arguments you made earlier today are also preserved. I  
23 realized after I got back to chambers that some of those issues  
24 had come up in connection with a motion to dismiss. So it was  
25 deja vu. But in any event.

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1 MR. TAYBACK: Thank you.

2 THE COURT: Now, I want to go over to be sure we have  
3 it absolutely right in terms of timing on Monday. This is a  
4 terrific jury, as you undoubtedly have seen. They will be here  
5 at 9:45. Nevertheless, realistically by the time we get them  
6 up it will be 9:50. So the government will start at 9:50.  
7 Now, if you run an hour and a half, you would be over by 11:20.  
8 So I take it that's based on what we agreed to this morning;  
9 you're only going to go an hour and a half.

10 MS. LA MORTE: That's fine, your Honor.

11 THE COURT: OK. Then, although I give them a  
12 15-minute break, again it's more likely to take about 20  
13 minutes, maybe even 25. So let's say the first defense  
14 argument starts at 11:45. And that would go one hour. And  
15 then a lunch break. And then pick up the rest. So it's 11:45  
16 to 12:45, and then 1:45 to 2:15. And the second -- I'm sorry.  
17 How --

18 MR. GILBERT: Your Honor, I thought you said an hour  
19 and 15 minutes.

20 THE COURT: An hour and 15 minutes. Thank you very  
21 much. It would be better if we could complete it before the  
22 lunch break. So why don't I have the jury take a later lunch  
23 break. So it will be 11:45 till 1. Then second defense will  
24 be 2 to 3:15. We'll go immediately into the rebuttal. So  
25 3:15 -- you want 45 minutes, right?

L3JAWEI4ps

1 MR. FOLLY: Yes, your Honor.

2 THE COURT: All right.

3 What I'm going to do is then -- I would like to ask  
4 them to stay to 4 o'clock. But the pandemic rules, are --

5 MR. TAYBACK: Your Honor, I think in the last trial  
6 you asked the jury if they could take a shorter lunch break. I  
7 think they were happy.

8 THE COURT: Yes. That's exactly where I'm going. So  
9 we'll take a lunch break from 1 to 1:45, have the second  
10 defense submission from 1:45 to 3 o'clock, and then the  
11 government's rebuttal from 3 o'clock to 3:45, so that all works  
12 out.

13 All right. Terrific.

14 MS. LA MORTE: Your Honor, just one scheduling note.  
15 I don't know obviously as well as you do what the court's  
16 pandemic rules are, but our understanding is that, in the other  
17 trial before Judge Castel, that, I think they closed today,  
18 they're staying till 4:30. So I don't know if they have things  
19 staggered or not. But their trial day has been 9:45 to 4:30.

20 THE COURT: Really.

21 MS. LA MORTE: Judge Castel.

22 THE LAW CLERK: What surprises me about that is not  
23 that they're going to 4:30 but that they're starting at 9:45  
24 because I understood the point was to have the juries on the  
25 various trials arriving and leaving at different times.

L3JAWEI4ps

1 MS. LA MORTE: Maybe I have the start time wrong, but  
2 they're definitely ending at 4:30.

3 THE COURT: Oh, but no, no, no. If they're  
4 starting -- you had the option, I had the option too, to start  
5 later and end later. So there are several alternatives. One  
6 is they're starting later and therefore ending later. The  
7 second is that Judge Castel is a notorious law breaker. And  
8 the third is that no one there can keep time.

9 But anyway, I will nevertheless actually just check  
10 with Judge Castel because if he knows something I don't know  
11 and we have a little more freedom --

12 MS. LA MORTE: It might add flexibility. Even just a  
13 few minutes might help.

14 THE COURT: Anyway, at least for now, it's the  
15 schedule we just all agreed to.

16 All right. So everyone have a good weekend, and I  
17 will see you at 9:45.

18 Yes.

19 MR. ARTAN: Quick question, your Honor. I know that  
20 you omitted the requested instruction about a loss vis-a-vis  
21 fraudulent intent, basically because it's not an element. I  
22 was just wondering if we have leeway to argue that point even  
23 though there's no instruction.

24 THE COURT: Well, I'm glad you raised that. What  
25 exactly are you going to argue in that regard?

L3JAWEI4ps

1 MR. ARTAN: Well, considering --

2 THE COURT: I think the only argument I think you  
3 could make is, one reason why the banks could care less, in  
4 terms of materiality, is because they weren't losing money. If  
5 that's the argument you want to make, I would allow that, but  
6 only to that extent. What I would not allow, for example, is,  
7 either directly or in veiled ways, "Ladies and gentlemen, the  
8 banks couldn't lose money, so what are we doing here?"

9 MR. ARTAN: I wasn't planning on that one, but what I  
10 was hoping to get into was, why would my client have a  
11 fraudulent intent if he doesn't believe that there's going to  
12 be any loss?

13 THE COURT: I'm sorry. Hold on a minute.

14 Because he's getting money out of it. But I don't  
15 see -- no, that argument is -- I don't -- the argument is --

16 MR. ARTAN: In other words, he --

17 THE COURT: I don't even understand that argument,  
18 forgetting about whether it's -- the claim is here that he  
19 helped devise a scheme to use false -- to make it look like  
20 these were not marijuana purchases. And I haven't -- you may  
21 have arguments, there's certainly arguments, that, you know, he  
22 wasn't involved and so forth and a lot of witnesses didn't even  
23 know who he was, etc. But the argument that you're now making  
24 is, assuming he was involved, he didn't have fraudulent intent  
25 because he knew that the banks wouldn't lose any money. That

L3JAWEI4ps

1 is, I think, contrary to the very issue we were discussing at  
2 the earlier charging conference. He was still, you know, this  
3 is assuming he's involved. Assuming he's involved, he's still  
4 concealing information from the bank that he knows will be used  
5 to obtain, by him and his co-conspirators and Eaze and so  
6 forth, money and property. That's all that has to be shown.

7 I do think you can make the argument on materiality.  
8 But I don't think you can make the argument you just made.

9 MR. ARTAN: Well, I'm hoping I can make a slight  
10 nuance in what you're talking about, which would be that he  
11 wasn't even considering the U.S. banks because it was no loss.

12 THE COURT: But, again, this argument presupposes,  
13 because you've always had your argument he wasn't involved,  
14 period, but this argument is, "ladies and gentlemen, even  
15 assuming you think he was involved and even if he therefore  
16 made false statements or helped others make false statements  
17 about what these purchases were really about, he had no intent  
18 to defraud the banks because he knew that they wouldn't suffer  
19 any loss." That misconstrues the law.

20 MR. ARTAN: No, but what I'm saying is, he wasn't even  
21 thinking about the U.S. banks, which is different.

22 THE COURT: I hear what you're saying, but I will not  
23 permit that argument.

24 There you go. You have another appeal issue. I  
25 assume you're sure you're going to get an acquittal anyway.

L3JAWEI4ps

1 So -- but I do think that's not a proper argument.

2 Now, in regard to objections during summations, here's  
3 my preference. Obviously no one should interrupt as a regular  
4 matter. We want, as a matter of both effectiveness and  
5 professionalism, we want the -- I guess the best way is to say  
6 summations are not similar to a presidential debate. But if  
7 someone says something that has absolutely no basis in the  
8 evidence -- and believe it or not, I've had cases where that  
9 happened -- then you should object right then and there,  
10 because I want to cure that right at the moment so the jury --  
11 I can cure other things. If someone misstates a law or  
12 something like that, that can always be handled after the  
13 summation is over, through a curative instruction. But if  
14 someone is saying, "and he couldn't have done this because he  
15 was in Rangoon when this meeting occurred," and there's nothing  
16 in the record to suggest he was in Rangoon or anywhere near  
17 Rangoon, the time to object to that kind of mistake is when  
18 it's said so I can tell the jury that there's no evidence of  
19 that. I don't expect that to come up, frankly, with lawyers of  
20 your quality, but I just wanted to make that known. Any other  
21 objections, like to misstating the law or something like that,  
22 can be saved for the end of the summation, but, you know, ask  
23 for a sidebar at that point.

24 All right?

25 Anything else?

L3JAWEI4ps

1 MR. TAYBACK: Nothing from Mr. Akhavan, your Honor.

2 MR. GILBERT: No, your Honor.

3 MR. FOLLY: No, your Honor.

4 THE COURT: Very good. See you all on Monday. I know  
5 you'll spend most of the weekend watching TV, but have a good  
6 weekend.

7 MR. FOLLY: Thank you, your Honor.

8 THE LAW CLERK: Judge, what time are we starting on  
9 Monday?

10 THE COURT: I don't see any reason to have you come in  
11 early unless you do.

12 Just to be sure, why don't we say 9:30.

13 (Adjourned to 9:30 a.m., March 22, 2021)

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